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SUMMER NUMBER.

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This is the last Will and Testament
of me
John Charles Wilson of The Knoll, Bridge End, Bridport, Gentleman.....
I hereby bequeath the sum of
One thousand pounds to
The Cancer Hospital (Free)
Fulham Road, London, S.W.3.
free of all duties . . . . . .
. . . . . .

In witness whereof I have hereunto set my hand this twentieth day of May One thousand nine hundred and thirty three.

Signed and acknowledged by the said John Charles Wilson as his last Will in the presence of us both present at the same time who in his presence at his request and in the presence of each other have hereunto subscribed our names as Witnesses.

John Charles Wilson

Fredk W. Moore,
36 Gracechurch St,
Surveyor.

William G. Briggs
19 High Street
Edmonton N
Law Clerk.

The Secretary of THE CANCER HOSPITAL (FREE), Fulham Road, London, S.W.3, will be pleased to send full particulars of The Cancer Hospital to any Solicitor desirous of advising his clients with regard to LEGACIES, DONATIONS and SUBSCRIPTIONS.

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# The Solicitors' Journal

VOL. LXXVIII. **Saturday, June 9, 1934.** No. 23

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## Current Topics.

### Birthday Honours.

AMONG the recipients of honours on the occasion of His Majesty's birthday are two in whom the members of the solicitor branch of the profession have a special interest, namely, the President of and the Secretary to The Law Society, in both instances the honours being eminently well merited by active work for the members of the Society. Sir REGINALD WARD EDWARD LANE POOLE, who has now been appointed a Knight Commander of the Royal Victorian Order, belongs to a distinguished and scholarly family, and is himself the embodiment of those qualities of which, in his public utterances, notably since he became President of The Law Society, he has given ample evidence. Admitted a solicitor in 1891, he is now senior partner in the firm of Lewis & Lewis, in which capacity he has been associated with many *causes célèbre*, in the conduct of which his skill, learning and experience have ever been conspicuous. The additional honour now conferred upon him, is a worthy recognition of his great professional and public services. It was eminently fitting also that the long and useful service of Mr. EDMUND R. COOK, as Secretary to The Law Society, should be rewarded with a Knighthood. Sir EDMUND, as we must now designate him, was admitted a solicitor in 1894, and in 1914 was appointed to the responsible post he so worthily fills. Our heartiest congratulations are offered to both learned members of the profession.

### Scottish Legal History Society.

To a very charming book published a year or two ago, under the title "A Scotsman's Heritage," Lord MACMILLAN contributed the chapter dealing with Scots Law, and with the literary grace of which he is a past-master he presented his subject so that his readers felt themselves very much in the case, *mutatis mutandis*, with the student who attended the lectures of the much lamented F. W. MAITLAND, and afterwards was heard to say that "Maitland made you feel that the history of law in the twelfth century was the only thing in life worth living for." At the conclusion of his chapter, however, Lord MACMILLAN was fain to deplore the absence in the literature of Scotland of anything comparable to the great work of Sir FREDERICK POLLOCK and F. W. MAITLAND or of Sir WILLIAM HOLDSWORTH, and he then added: "A large body of material, much of it of absorbing national interest, awaits the research of an historian equipped with due knowledge and enthusiasm. It is to be hoped that the auspicious occasion of the quater-centenary of the institution of the Court of Session may see some *vates sacer* arise who will do justice to a theme at once so inspiring and so patriotic." So far, unfortunately, the *vates sacer* has not arisen, but since Lord MACMILLAN called attention to the subject the matter has not been lost sight of, and, mainly, we believe, to his untiring energy and enthusiasm, a step is at last being taken in the endeavour to do for Scotland what the Selden Society has done for England, namely, make available hitherto unpublished documents and other matter of exceeding rarity which may throw light on the history and development of Scots law, which, it appears, is beginning to attract attention as a subject of comparative study, Professor LEVY-ULLMAN, of the chair of Comparative Civil Law in the Faculty of Law, Paris, being cited as saying that "Scots law as it stands gives us a picture of what will be some day (perhaps at the end of this century) the law of the civilised nations, namely, a combination between the Anglo-Saxon system and the continental system." The proposal now is that a Scottish Society should be formed, which, it is suggested, should be called the Stair Society in honour of the greatest name in the history of Scots law, which should arrange for the publication of volumes thought likely to be of value as furthering the aims which it has in view. The project, which is sponsored by Lord DUNEDIN, Lord THANKERTON, Lord MACMILLAN, Lord President CLYDE, the Lord Justice-Clerk and a number of prominent members of the Faculty of Advocates will, we trust, find generous support and accomplish for Scotland what the Selden Society has been able to do for England.

### Marriage (Extension of Hours) Act.

"FROM or after" 17th May it is lawful to solemnise a marriage at any time between the hours of eight in the forenoon and six in the afternoon, as a result of the passing of the Marriage (Extension of Hours) Act, 1934. Almost exactly forty-eight years ago the old law that marriages could validly be celebrated only between the hours of eight

in the forenoon and twelve midday was revolutionised by the Marriage Act, 1886, introduced by a private member, Mr. J. Carvill Williams. The new Act modernises the law in a fashion which few can disapprove. According to the press, the first marriage to be performed after 3 p.m. was at the St. Pancras Registry Office a week after the passing of the Act, but no doubt increasing numbers of happy couples will find the later hours propitious, and possibly unhappy bride-grooms may find the extended hours of single blessedness not unwelcome. A contributor to a daily paper writes that the new Act is "likely to provide the subject for involved legal argument on its proper interpretation as applied to special licence marriages," and says that as the Act omits any reference to special licences "legal opinion inclines to the view that all marriages, including those by special licence, must now take place between the hours of 8 a.m. and 6 p.m." A special licence can be granted by the Archbishop of Canterbury to solemnise a marriage at any convenient time or place: 25 Henry 8, ch. 21, ss. 2-12. This right was expressly saved in the Marriage Act, 1823, s. 20, and in the Marriage Act, 1836, s. 1, and the writer argues that as the right is not saved in the new Act there has been a "virtual repeal" of the power to grant special licences. There seems no ground for supposing that this is correct, because the substantive section of the new Act is in almost the same terms as the Marriage Act, 1886, which extended the hours to 3 p.m., and no one in the last forty-eight years has questioned the legality of celebrating marriages by special licence "at any convenient time and place." These Acts merely extend the law as to the times of marriage, and therefore no saving clause is necessary. There can be no repeal by implication unless the later Act is so inconsistent with or repugnant to the former Act that the two cannot stand together (*White* v. *Islington Corporation* [1909] 1 K.B. 133), and this is clearly not so in the case of the new Marriage Act. Clergyman may therefore continue to solemnise marriages by special licence with an easy conscience and without fear of a prosecution which might end in penal servitude under s. 21 of the Marriage Act, 1823.

**The College of Arms.**

To signalise the 450th anniversary of the incorporation of the Heralds by charter of Richard III a commemorative exhibition is shortly to be held at the College of Arms of objects of historic and heraldic interest. Probably few of those whose daily avocations take them past the portals of the College in Queen Victoria Street give any thought to the slightly somnolent-looking building, whose contents, however, carry us back in imagination to the days of chivalry, when knights were bold and imbued with a high sense of honour, a disdain of danger, a love of adventure and a compassion for the weak and oppressed, and when the pedigrees and armorial bearings of these gallant warriors were recorded by the officials charged with this duty. A very matter-of-fact visitor to the College some years ago described it as "a curious old place inhabited by a lot of officials with old-world titles and occupations." Among other things he was shown the Court of Chivalry, a travesty of a court in heavy black oak, hung round with ancient banners, and to his gaze were exhibited the old pedigrees which every peer formerly had to deposit to show who was his heir; many of these ancient documents being garnished with finely illuminated coats of arms. The Court of Chivalry by an early statute was given "cognisance of contracts touching deeds of arms and war out of the realm, and also of things which touch war within the realm which cannot be determined or discussed by the common law; together with other usages and customs to the same matters appertaining." Its proceedings were by petition in a summary way, and the trial was not by a jury of twelve men but by witnesses or by combat; but, continues Blackstone, "as it cannot imprison, not being a court of record, and as by a resolution of the superior courts it is now confined to so narrow and restrained a jurisdiction, it has fallen into contempt and disuse." According to one authority, the last instance of its sitting was in 1737. The visitation books compiled by its officials when progresses were solemnly and regularly made into every part of the kingdom to enquire into the state of families and to register such marriages and descents as were verified to them upon oath have been allowed to be good evidence of pedigrees. It has also been solemnly laid down that a certificate taken from the register of the funerals of peers kept at the College is admissible in evidence as an official document taken by persons whose duty it was to make it up; but pedigrees deduced from these books and drawn up by a herald are not admissible. Although thus not without a certain practical importance, it may be said that the interest of the College is picturesque and historic rather than utilitarian.

*Res Judicata.*

A curious set of circumstances recently came before the President of the Divorce Division, in *L—., F.B.O.* v. *L—., J.M.* (*The Times*, 15th May), giving rise to an interesting question of *res judicata*. A wife presented a petition for a judicial separation on the ground of desertion, and the respondent in his answer denied desertion. The petitioner then presented a supplemental petition asking for dissolution on the ground of the respondent's alleged adultery and for custody of the child of the marriage. The petitioner admitted that she had been herself guilty of one act of adultery. The respondent filed no answer and the petitioner obtained a decree *nisi*, which was later made absolute, and an order was made that "the child issue of the marriage between the petitioner and the respondent do remain in the custody of the petitioner until further order of the court." Shortly before the decree *nisi* was made absolute the petitioner presented a petition for permanent maintenance for herself and the child. By his answer, the respondent raised the question of the petitioner's own conduct, and in a further answer he raised the issue of non-access at the time the child was conceived. A summons for the purpose of deciding whether *aliunde* evidence to prove non-access was admissible was adjourned into court. The President referred to *Restall* v. *Restall* [1930] P. 189 (74 Sol. J. 319), which decided that allegations of misconduct both before and after marriage were relevant evidence of "the conduct of the parties" within s. 190 of the Supreme Court of Judicature (Consolidation) Act, 1925. It was obvious that evidence that the wife had given birth to another man's child during the marriage was relevant evidence of the conduct of the parties. His lordship also referred to *Ord* v. *Ord* [1923] 2 K.B. 432, in which Mr. Justice Lush stated that the principle often treated as covered by the plea of *res judicata* "prevents a litigant from relying on a claim or defence which he had an opportunity of putting before the court in the earlier proceedings and which he chose not to put forward." In view of Matrimonial Causes Rules 21 and 22A, and Appendix No. VI, dealing with the form of answer, his lordship had no doubt that the practice was to treat as being admitted any material fact alleged in the petition not expressly stated in the answer to be denied or not to be admitted. The word "children" in s. 193 of the Judicature (Consolidation) Act, 1925, giving the court jurisdiction to make orders for custody of children, was held, in *Green* v. *Green* [1929] P. 101, to mean legitimate children and therefore the legitimacy of the child was in issue in the divorce proceedings. Again, in *Woodland* v. *Woodland* [1928] P. 169 (72 Sol. J. 303), it was held that where a decision was given in restitution proceedings in which the validity of a marriage was in issue, *res judicata* operated to prevent it being raised in subsequent nullity proceedings. Evidence, therefore, to disprove the child's paternity was disallowed, and the summons was dismissed with costs.

### Land Drainage: Effective Working of 1930 Act.

THE Land Drainage Act, 1930, has now been steadily operating since it reached the statute book, and, except that there has been a more or less continuous stream of Orders during the last two years, the legal profession has heard very little about what has been going on. It is, therefore, interesting to learn on the authority of a well-known solicitor (Mr. F. M. FARMER, Clerk to the River Ouse (Yorks) Catchment Board) that the measure has proved a substantial success. So much we gather from reports of a recent lecture by Mr. FARMER to the Chartered Surveyors' Institution, in the course of which the old and new machinery for dealing with this long-standing problem were discussed and compared. There is no doubt that, prior to the appointment of the Royal Commission of 1927, the whole position was chaotic. The overlapping of authority and general confusion of responsibilities amongst the 350 or more different drainage boards and other authorities had militated against any effective action anywhere. Under the present law, however, there is a complete system under which every area is properly covered. The method of internal drainage boards working under catchment boards—the latter of which are concerned with big questions of general policy and have control of main rivers and other matters of primary importance (e.g., legislation) appears to be working extremely well. The system of popular election of members of the internal drainage boards, whose term of office is three years, also gives strength and efficiency to the work. Altogether, we think it may fairly be said that in the Act of 1930 Parliament has given us a piece of really valuable legislation.

### Deceased Dependent of Deceased Workman.

WHEN money is paid into court by an employer with an admission of liability under r. 61 of the Workmen's Compensation Rules, in respect of the dependency of the widow of a deceased workman, and the widow dies before the county court judge makes his award, is the next-of-kin of the widow entitled to the sum paid into court? The Master of the Rolls, in *Re Ropner Shipping Co. Ltd.* v. *Morgan and Another; Miller* v. *Same* (*The Times*, 6th June), described this as a novel and interesting point. The county court judge had awarded £200 to the father and next-of-kin of the widow. Section 2 (3) of the Workmen's Compensation Act, 1925, provides that in the case of a dependent's death, either before a claim is made or before an agreement or award has been reached, the dependent's legal personal representative has no right to compensation, and the amount is to be calculated and apportioned as if the dependent had died before the workman. At the date of the widow's death the amount of the respondent's liability had not been ascertained, and later the registrar reported to the county court judge that the amount paid in was inadequate. It then became the duty of the judge, under sub-r. (7) of r. 61, to inquire further into the matter, and make such order as, under the circumstances, he might think just. The Master of the Rolls held that, in view of s. 2 (3) and of the fact that the widow was deemed to be dead under that section before her husband died, there could be no dependency in respect of her, and if that fact had been known at the time when payment was made into court the employers would have paid a smaller sum. The matter was still open as, under sub-r. (1) of r. 61, the rules as to payment into court with an admission of liability applied where the amount payable was not ascertained or decided by arbitration or by agreement at the time when the payment was made into court. Under sub-r. (7) therefore, the employers could come forward and ask for the payment as in justice to them because their position had to be determined before the matter came before the county court judge. Lord Justice ROMER and Lord Justice SLESSER also gave judgment to the same effect and the appeal was allowed. The provision in s. 2 (3) was newly introduced by the Act of 1923, the position previously being that on the death of the workman the right to compensation immediately vested in the dependent and was a property right, passing on the death of the dependent to his executor or administrator, whether the dependent had made a claim or not: *United Collieries* v. *Simpson or Hendry* [1909] A.C. 383; *Phillips* v. *Kershaw* [1920] 3 K.B. 297. The latter case decided that the personal representatives were entitled only to a sum equal to the deceased dependent's loss during the time she was alive. The present decision is the logical inference from s. 2 (3), that the deceased dependent's representatives are not entitled to anything, if no agreement or award has been reached, even where the deceased dependent has lived for several weeks after the workman's death and so suffered real loss.

### Jurisdiction of the General Medical Council.

THE absolute powers of the General Medical Council have been the object of public comment more than once recently, and it is sometimes surprising to discover how far they actually extend. A solicitor appearing before the General Medical Council on 1st June on behalf of a medical practitioner raised an important point with regard to the Council's jurisdiction to hear cases where the charge amounted to a misdemeanour. The charge was that of improperly and fraudulently representing to a local insurance committee that certain panel patients had paid the medical practitioner considerably less in fees for special treatment than they had in fact paid him, in order that the committee, in adjusting the doctor's remuneration, might deduct from it only the lesser amounts. The local medical service sub-committee, before which the medical practitioner had no right to legal representation, found that he had offended against the panel regulations. The Minister ordered no disciplinary inquiry to be held into his conduct under the National Health Insurance Acts but fined him £15. It was submitted by the medical practitioner's solicitor that, on the grounds mentioned, the matter was not within the jurisdiction of the General Medical Council, and that the practitioner had a right to have such an accusation determined before a court of law where evidence would be given on oath and the facts considered by a jury. The matter had been referred to the Council on a report by the Minister of Health, and the solicitor urged that the Minister was abusing the process of the Council. The Council overruled the objection, and at the end of the hearing found that the facts had not been proved to its satisfaction and dismissed the case. If any registered medical practitioner "shall, after due inquiry, be judged by the General Council to have been guilty of infamous conduct in any professional respect," the General Council may, if they see fit, direct the registrar to erase the name of such medical practitioner from the register (s. 29, Medical Act, 1858). "Infamous conduct in a professional respect" was defined by LOPES, L.J., in *Allison* v. *General Council of Medical Education and Registration* [1894] 1 Q.B. 750, at p. 763, where he said: "If it is shown that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good reputation and competency, then it is open to the General Medical Council to say that he had been guilty of infamous conduct in a professional respect." COTTON, L.J., pointed out in *Leeson* v. *General Council of Medical Education and Registration* (1889), 43 Ch. D. 366, that the Council could not, strictly speaking, take evidence, as it could not be on oath, and therefore, if it was once established that the matter in question was within s. 29, the court "ought not to look at the evidence or in any way consider whether they have arrived at a right conclusion." The fact that a matter charged as "infamous conduct" constitutes a felony or misdemeanour for which the practitioner has not been tried does not seem to affect the Council's jurisdiction. Although no injustice resulted in the case under review, it certainly reveals a possibility of unfairness, and is a matter meriting attention when the modernisation of the powers of the Council is considered.

# Mentally Defective Criminals.

## A GAP IN THE LAW.

EVEN amongst those who possess the most advanced medical knowledge, the study of diseases of the mind is still in its infancy. More particularly is the law (as is its wont) sadly behindhand in the methods which it permits of dealing with those unfortunate people who are gradually becoming the objects of sympathy instead of the targets of ridicule. Insanity, in the fullest sense of the word, has been long a good defence to a criminal charge. The well-known rule was laid down by the judges in *Macnaughton's Case*, 4 St. Tr. (N.S.) 847, that to establish a defence of insanity—

> "It must be proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong."

In *Director of Public Prosecutions* v. *Beard* [1920] A.C. 479, the defence was extended to temporary insanity produced by drunkenness, provided that the accused was thereby rendered incapable of forming the specific intent essential to constitute the crime charged, and was not merely inflamed as to his mind so that he more readily gave way to some violent passion. It was also pointed out in that case that the true insanity may be produced by excessive drinking, in which case the test to be applied is that laid down in *Macnaughton's Case, supra.*

Where the defence of true insanity is proved, the jury are to find a special verdict of "guilty but insane at the time," and the prisoner is to be ordered to be detained until His Majesty's pleasure shall be known (Trial of Lunatics Act, 1883, s. 4). This would not appear to apply to a case such as *Beard's Case, supra*, where the verdict would presumably be "not guilty." There are, however, many cases of mental disease falling far short of the foregoing definition of insanity where it is nevertheless highly desirable to provide some other means of restraint than imprisonment for crimes committed by persons so afflicted. For this purpose Acts have been passed, and the relevant section is now s. 1 of the Mental Deficiency Act, 1927. This Act classifies mental defectives in four categories, namely idiots, imbeciles, feeble-minded persons and moral defectives, defining carefully the meaning of each of these words, but it also defines mental defectiveness as being "a condition of arrested or incomplete development of mind existing before the age of eighteen years," however caused. The courts are given power to deal with such persons by s. 8 of the Mental Deficiency Act, 1913, the effect of which is that they may be kept under control in a suitable institution.

By the Inebriates Act, 1898, s. 2 (1), and the Habitual Drunkards Act, 1879, s. 3, reformatory treatment may be ordered in the case of a person who—

> "not being amenable to any jurisdiction in lunacy, is, notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to himself or herself, or incapable of managing himself or herself, and his or her affairs."

There are, unhappily, frequent cases in our criminal courts where a prisoner is convicted of some crime of violence or attempted violence, usually of a sexual nature, who does not come within any of the enactments above referred to. There are many men who have long intervals of normal mentality, particularly when they are under some restraint, such as is provided in a mental home. These people are not certifiable as insane and cannot therefore be kept under restraint against their will, but must be released as soon as their temporary relapse is over. When released they almost inevitably give way to some depraved passion and commit an offence. They do not, in many cases, come within the Mental Deficiency Acts as "moral defectives," because their vicious tendencies have only manifested themselves since the sufferers were eighteen years old. It is not true to say that the law will not put restraint upon a person who has lucid intervals, for the Acts applying to inebriates referred to above have been held to apply to persons who were, when sober, perfectly capable of managing their affairs (*Eaton* v. *Best* [1909] 1 K.B. 632), and though this Act deals with the capacity of the inebriates to manage their own affairs, it is submitted that there is no reason why the existence of lucid intervals should prevent a person from being put under restraint for the safety of others. Some legislation is clearly badly needed, and it is to be hoped that courts and those in charge of mental institutions will not much longer have to complain of their helplessness, as they do at present. Apart from the powers set out above, there is no alternative except imprisonment or binding over. The former generally results in the prisoner being sent to a mental home and of necessity released at the end of his sentence; the latter provides inadequate restraint and is, in any case, only for a limited period. What is required is to give to some sort of medical board power to order slight but permanent restraint in cases where there is real danger of further outbreaks of abnormality upon release. It is a power which would have to be used sparingly, because the cases are of necessity "border line" cases, but in these days of a vigilant press and public, a responsible judiciary and responsible persons in charge of mental institutions there would, it is submitted, be little danger of abuse. As it is at present, the principal of a mental institution has often to release a person who is at the time perfectly normal, though the principal knows full well that within a very short time, often a few days, from release the abnormality will again show itself. The position is, it is submitted, dangerous to the public and discreditable to the law.

# The Method observed upon a Person being Appointed a Master of the Court of Chancery.

[We are indebted to the Master Chandler for sending us a copy of the following interesting entries which have been found in the Diaries of the Masters in Chancery.—ED., *Sol. J.*]

THE Person intended for this Office hath always been chosen from amongst the Barristers at Law or the Civilians, and is nominated by the Lord Chancellor, Lord Keeper or Commissioners for the Great Seal, as it may happen, and before Him or Them takes the Oath of Allegiance, the Oath of Renouncing all Foreign Jurisdiction and also the Oath for well and faithfully executing the office of one of the Masters in Ordinary of the Court of Chancery of Our Lord The King.

All these Oaths are taken in the presence of Two or more *Witnesses* whose names are inserted in the Memorial hereafter mentioned, and thereupon the Person is by the Lord Chancellor assigned, appointed and allowed one of the Masters in Ordinary of the said Court, To hold to him for Life with all and singular the Pledges, Fees, Rewards, Robes or Liveries, and all other Profits, Comodities and Emoluments whatsoever to the like Masters in Ordinary from the Hanaper of the said Court and elsewhere or otherwise in any manner due and payable or which have been used to be paid.

A Memorial of this Transaction is drawn up by the Clerk of the Crown in Chancery and entered by him.

And a Copy thereof is engrossed on Parchment, Examined and signed by the Deputy Clerk of the Crown and by him delivered to the New Master.

This Copy of the Memorial is afterwards enrolled in the Petty Bag in his Majesty's Court of Chancery, and signed by the Senior Clerk there.

It is then entered in the Office of the Clerk of the Pells, and of the Auditor of his Majesty's Exchequer, and signed by the proper officers there.

When the New Master hath been thus admitted, he waits on the Senior Master of the Court, if in Town; if not, on the next in seniority, with a request to introduce him to His Honour The Master of the Rolls, to whom a message is sent to know the time His Honour will be at leisure for that purpose; which done, the New Master by himself waits on each of the other Masters, to inform them of his having been appointed one of their Body. His name is then entered in the several Rotas and he takes his place in Court the first day it cometh to his turn to sit. If his first sitting be in Westminster Hall in Term time he is complimented with sitting senior or next the Chancellor that day, to prevent any obstruction to the Chancellor's putting on the Hat of the New Master in Court.

If upon the New Master's coming into Court, the Chancellor happeneth not to see him, the Register reminds the Chancellor that the New Master is on the Bench. Then the Chancellor either goes to the Master or calls to the Master to come up to him, then takes the Master's Hat out of his hand and puts it upon his head, saying to him, "Sir, you have a Right to be covered in this Court," which being done, the Master takes off his Hat, makes the Chancellor an Obeisance, and seating himself, puts on his Hat again, and remains covered as long as his Discretion directs him.

The Importance of this Right pleads strongly for the Masters frequent wearing their Hats in Court; and as many inconveniences will arise from the disuse of it and in time endanger the Right itself, it is resolved and agreed by the present Masters that they will exercise this mark of distinction; and it is earnestly recommended to all succeeding Masters to preserve the same.

If it be esteemed an Honour for the Judges to be covered in the House of Peers, though with the Leave and Permission of the Lords, which The Lord on the Woolsack never fails to ask, doth not the Right of sitting covered in the Highest Court at Westminster point out a Distinction and redound to the Honour of the Masters? Besides, the Wearing the hat in Court is more respectful to the Giver of that Right, than the neglect which tacitly declares it a matter of no consequence or esteem.

FRAN. ELD.

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Rolls House.
10th April 1851.

My dear Sir,

I have just heard from the Lord Chancellor that he intends to receive the Judges &c. on Tuesday next at his house in Eaton Sq.

I propose therefore to take my Seat at Westminster on that day about one o'clock.

I am,
Yours very sincerely,
JOHN ROMILLY.

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The Master of the Rolls held a Levee at his house, Gordon Square, on the 1st day of Easter Term.

Most of the Masters attended.

Two (*a*) of them afterwards attended His Honor upon his taking his Seat on the Bench in the Rolls Court at Westminster.

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Copy of a Letter from the Masters to Vice Chancellor Turner on his Appointment as Vice Chancellor and his Answer:—

St. Leonards.
10th April, 1851.

Dear Vice Chancellor,

As Senior Master, allow me in the name of all the Masters to express their hope that you will permit them to show their high regard and respect for you by deputing two of their Body to attend you in Court upon the first day of taking your Seat on the Bench. Should this Proposal be acceptable to you have the goodness to cause a communication to be made to Master Humphry, the Vacation Master, at his office in Southampton Buildings as to the time and place of taking your seat. Allow me to add the congratulations of the Masters on your appointment and to assure you of the entire satisfaction it affords them.

Very truly
Yours
J. W. FARRER.

The Honble.
The Vice Chancellor, Turner.

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Richmond.
13th April 1851.

Dear Humphry,

A Note from Master Farrer expressing on the part of the Masters the very kind wish that two of their body should accompany me on the first day of taking my seat on the Bench and requesting me to communicate with you on the subject, reached me late on Friday. Having fully expected to meet you at the Chancellors on Saturday I omitted to answer it at once, and on my return home accidentally forgot it in the hurry of Saturday for Richmond, pray accept my best apologies for the omission & be good enough to assure the Masters on my behalf that I am very much gratified by their kind wishes and accept most gratefully this mark of their regard.

Yours very sincerely
G. I. TURNER.

Joseph Humphry Esq.

(*a*) Two of the Masters attended The Vice Chancellor upon his taking his Seat on the Bench in the Vice Chancellor's Court on the first day of Easter Term at Westminster after the Lord Chancellor's Breakfast.

(*a*) Masters Kindersley and Humphry.

(*a*) Masters Rose and Blunt.

# Emergency Water Supply Powers.

THE Water Supplies (Exceptional Shortage Orders) Act, 1934 (24 & 25 Geo. 5, c. 20), which received the Royal Assent on the 17th May last, is a new departure in legislation. The Act is expressed to continue in force until the 31st December, 1935. But, although a temporary measure, it is one which must receive the careful attention of all practitioners as private rights may be considerably interfered with thereunder, albeit subject to its compensation provisions.

The Act has been passed in consequence of the serious situation disclosed throughout the country, as far as water supplies are concerned, by reason of the exceptional drought of last year, followed by a lack of rain during the winter.

The Minister of Health is empowered to make Orders under the Act where he is satisfied that by reason of an exceptional shortage of rain a serious deficiency of supplies of water in any locality exists or is threatened (s. 1). Thus, it is to be observed, an Order cannot be made under the Act where a water shortage is due to normal increases in demand.

Orders may be made in favour of any water undertakers for (*a*) authorising the taking of water from any specified source; (*b*) suspending or modifying any restriction or obligation, as respects (i) the taking of water from any source, (ii) the discharge of compensation water, (iii) the supply of water in any quantity or manner, or (iv) the filtration or other treatment of water; (*c*) authorising or requiring water undertakers to supply one another in bulk on terms approved by the Minister, or in default of agreement as determined by the Minister or some person appointed by him; (*d*) authorising

water undertakers to prohibit the use of water for a particular purpose or to impose limitations on its use in their area of supply; (*e*) prohibiting or limiting the taking of water from any source if the Minister is satisfied that it would seriously affect the supplies available for the undertakers; and (*f*) controlling the operation of sluices or other works for drawing down or keeping back water in a source (s. 1).

The Order may authorise the undertakers to execute all works necessary for the discharge of their functions, including the powers contained in the Waterworks Clauses Act, 1847 (ss. 28-34), for the breaking up of streets for the laying of mains. It may also give a right of entry upon any specified land on giving seven days' notice to the owner and occupier (s. 2).

If restrictions are imposed with respect to water supplies to an inland navigation the Order may include provisions for suspending or modifying the taking or the discharge of water from the navigation (s. 1 (2)).

If the use of water for other than domestic purposes is prohibited or limited the Order may provide for the reduction or suspension of charges where not made by meter (s. 1 (3)).

The Minister in making Orders is to have regard to the interests of all persons concerned in the use of water, whether for agriculture, fisheries, industry, navigation or other purposes (s. 1 (4)).

Orders (other than those made under s. 3) cease to have effect at the end of a period not exceeding six months. The Minister has power to make a new Order or vary or revoke an Order by subsequent Order (s. 1 (5) (7)).

The expression "source" is defined to include rivers, streams, brooks and other running waters, canals, reservoirs, lakes, ponds, wells, springs and other sources, whether natural or artificial, and whether on the surface or underground.

"Water undertakers" means (*a*) a local authority, (*b*) any company, board or persons empowered by an enactment to supply water; and (*c*) any company or persons lawfully supplying water (s. 10).

The procedure for the making of Orders is contained in the Schedule to the Act and provision is made for the protection of all rights and interests.

Notice of an application for an Order must be advertised in one or more local newspapers, and also published in the *London Gazette* where the applicants are a local authority, company, board or persons empowered by a local Act, or Order confirmed by Parliament, to supply water and the application is to take water from a source, or suspend or modify a restriction or obligation on the taking of water, or on the discharge of compensation water.

Notice must be served on (*a*) every other water undertaker who will be affected; (*b*) every owner, lessee and occupier (except tenants for a month or less) where land is to be acquired compulsorily; (*c*) every person to whom a prohibition or limitation on the taking of water applies; (*d*) the other party to an agreement containing a restriction or obligation proposed to be suspended or modified; and (*e*) every person specified in an enactment as a person for whose protection a restriction or obligation, proposed to be suspended or modified, was imposed.

The notice is to state the general effect of the application and that representations may be made to the Minister within seven days. If land is to be acquired compulsorily the notice must also specify the land. The Minister cannot make an Order unless these provisions have been complied with.

Similar notice has to be given by the Minister if he proposes to make an Order otherwise than on the application of water undertakers.

The Minister may cause a local inquiry to be held on any application, and must do so if an objector so requests, unless satisfied that the objection either is frivolous or relates exclusively to compensation questions which can be dealt with by the arbitrator.

Notice of the making of an Order, stating where a copy may be inspected must be given in the same manner as an application for an Order.

With respect to Orders authorising the taking of water from any specified source, if the Minister is satisfied that (*a*) permanent works are necessary, (*b*) such works can be completed within six months after their commencement, and (*c*) the powers are such as might properly have been conferred on the undertakers if the taking of water from a new source had become necessary apart from any exceptional shortage of rain, the Order may authorise the taking of water from that source for an indefinite period; the purchase of land either compulsorily or by agreement; and power to execute works required (s. 3 (1) (2)). It must also incorporate, with the necessary adaptations, the provisions of the Waterworks Clauses Acts, 1847 and 1863, and of the Lands Clauses Acts (s. 3, sub-s. (3)).

Where an easement or other right to execute underground works is required, the undertakers cannot be required or entitled to fence off or sever the land from adjoining land (s. 3, sub-s. (6)).

If the Order authorises the compulsory purchase of land the undertakers may enter on, and take possession, on giving seven days' notice to the owner and occupier. Compensation will be payable as if ss. 84 to 90 of the Lands Clauses Consolidation Act, 1845, had been complied with (s. 3, sub-s. (7)). It is to be observed that the expiration of the Act does not affect the operation of an Order made under s. 3.

Penalties are imposed for contraventions of the provisions of Orders. If a water undertaker, required to supply water in bulk, defaults, the maximum penalty is £100 per day. A person using or taking water contrary to a prohibition or limitation is liable to a penalty not exceeding £50, or, on a second or subsequent conviction, imprisonment for three months, or a fine of £50, or both. Any person contravening provisions for controlling the operations of sluices is liable to a penalty not exceeding £5 and a daily penalty of 40s.

Compensation in respect of the taking of water for an indefinite period, and where permanent works may be required, is dealt with by s. 3 as already mentioned. Other claims for compensation are provided for by ss. 6 and 7. Compensation is payable (i) for the taking of water from a source, (ii) for the taking of water from a source otherwise than in accordance with a restriction which has been suspended or modified, (iii) for entry upon or occupation or user of land, (iv) where the taking of water from a source by any persons is prohibited or limited, and (v) where the Order suspends or modifies an obligation as respects the taking of water from a source or the discharge of compensation water.

In cases (i), (ii) and (iv) the arbitrator may, in assessing compensation, have regard to the amount of water which, on an equitable apportionment of the water available from the source between the claimant, the undertakers, and other persons taking water from the source, might fairly be apportioned to the claimant.

In class (v) the arbitrator may, if he thinks fit, have regard to the amount of water which would have been available to the claimant during the period during which the deficiency of supplies of water has continued, if the works of the water undertakers had never been carried out.

Claims for compensation are to be in writing, stating the grounds, and may be made at any time during the continuance of the Order or within three months from its cesser. Any question as to the right to recover, or the amount of compensation, is to be determined, failing agreement, by an arbitrator agreed on, or in default, appointed by the Minister.

The arbitrator is authorised to call in the services of an assessor. His decision on questions of fact is final, but he may, and shall, if the High Court so directs, state a special case for the opinion of the High Court upon any question of law arising. He may also state his award in the form of a

special case. The decision of the High Court upon any case stated is final and not subject to appeal to any other court.

A person aggrieved by an Order may question its validity by application to the High Court within twenty-one days after publication of the notice of the making of the Order. The court may quash the Order either generally or so far as it affects any property of the applicant. An appeal lies to the Court of Appeal but not to the House of Lords except by leave of the Court of Appeal.

An Order cannot otherwise be questioned by prohibition, *certiorari* or in any legal proceedings.

It is to be remembered that these Orders are exceptional measures brought about by exceptional drought. They cannot be justified except on these grounds. The Minister will only grant them as a last resort. It behoves water undertakers to take all steps possible to prevent waste and effect economies in the use of water and to conserve supplies. In the event of an application for an Order, the Minister will take into account what savings have been effected.

If, unfortunately, an application for an Order is found to be necessary it will probably facilitate matters if all interests affected are consulted beforehand and every endeavour made to reach agreement. The powers under the Act are sufficient to deal with any selfish or factitious opposition or "irreconcilables."

## The Protection of Pawnbrokers.

ANOTHER case has just been added to the already formidable array of cases dealing with the question who is to suffer for the fraud of a third party. It is to be hoped that one day a fraud will be committed on an owner of sufficient substance to take the matter to the House of Lords so that a complete review of all the cases can be made and a final and authoritative rule laid down getting rid of the many difficulties existing in the present line of cases.

What may be called the Pawnbrokers Protection Act is to be found in certain provisions of the Sale of Goods Act, 1893, and in the Factors Act, 1889. There are three categories of persons dealt with. First of all comes the seller or buyer in possession of goods after a sale, with the consent of the other party. If he sells or pawns the goods in fraud of the other party to the sale the transaction is valid in favour of a person dealing with him in good faith by virtue of s. 25 of the Sale of Goods Act, 1893, which reproduces the effect of ss. 8 and 9 of the Factors Act, 1889. Secondly, there is the person who receives goods on approval or on sale or return or other similar terms. Any disposition by him is valid provided he has procured the passing of the property to himself by an adoption of the transaction within the meaning of r. 4 of s. 18 of the Sale of Goods Act, 1893. Finally, s. 2 (1) of the Factors Act, 1889, protects a person who takes in good faith and without notice goods held by a mercantile agent with the consent of the true owner and sold or pledged by the mercantile agent when acting in the ordinary course of business of a mercantile agent.

In the recent case of *London Jewellers Ltd.* v. *Sutton* (1934), 50 T.L.R. 193, and *The Times* newspaper, 17th May, 1934, the facts shortly, were that one, Waller, told the plaintiffs that he could sell jewellery to actresses, and was accordingly given various articles, with each of which there was a note, headed "Dr. to London Jewellers Ltd.," followed by the words "on appro," which set out a fixed sum payable for the jewellery. The arrangement was that Waller was to account for that sum and to keep any surplus he succeeded in obtaining as his reward. In fact, as soon as he received the jewellery Waller pawned it with pawnbrokers through the mediation of various women. Waller having been duly despatched to prison, the plaintiffs brought an action in detinue against representative pawnbrokers.

One preliminary point was taken at the trial before Swift, J., namely, that there had been no sufficient demand and refusal. Swift, J., however, held that the application to the magistrate who sentenced Waller for the return of the jewellery, opposed as it was by the pawnbrokers, was sufficient demand and refusal, and that in any case no demand was needed to prove conversion. This decision was not challenged on appeal. There then followed the substantial defences indicated above, the last being s. 2 of the Factors Act. As to this Swift, J., held first, that Waller was not a mercantile agent at all, but a thief who intended from the first to misappropriate the jewellery; secondly, that Waller had obtained the jewellery by what amounted to larceny by a trick, but, that in view of the decision of the Court of Appeal in *Folkes* v. *King* [1923] 1 K.B. 282, this was not enough to negative the consent to possession required by the Factors Act; and thirdly, that in getting the women to do the pawning for him Waller was not acting in the ordinary course of business of a mercantile agent. On that point he followed *De Gorter* v. *Attenborough* (1905), 21 T.L.R. 19, a decision of Channell, J., on almost identical facts. On appeal the pawnbrokers entirely abandoned their reliance on the Factors Act, and the Court of Appeal said that they had been well advised to do so, using words which indicated approval of *De Gorter* v. *Attenborough*, although that case was not cited.

Ultimately, therefore, the case turned on the provisions of the Sale of Goods Act. Swift, J., surmounted the difficulties contained in the two sections quoted by saying that Waller never having intended to buy and the plaintiffs never having intended to sell, Waller was not a buyer within the definition of that Act, and accordingly the sections did not apply. The Court of Appeal, in reversing this decision, held that the whole matter was determined by *Kirkham* v. *Attenborough* [1897] 1 Q.B. 201 and *Folkes* v. *King* [1923] 1 K.B. 282, and accordingly it is necessary to consider the effect of those cases.

In *Kirkham* v. *Attenborough*, *supra*, it was held that where there was a contract for sale or return, a pledge by the person so receiving the goods was an adoption of the transaction within r. 4 of s. 18. The property therefore passed to that person at the moment of pledging, and at the same moment passed from him to the pledgee, who thus acquired a good title.

One way round this awkward obstacle was provided by the case of *Weiner* v. *Gill* [1906] 2 K.B. 574, where it was held that a reservation of the property in the goods until payment or debiting of the price constituted a "different intention" within the meaning of the preliminary words of s. 18 and that there was therefore no property to pass to the third party.

In *Whitehorn* v. *Davison* [1911] 1 K.B. 463, there was a finding of the jury that there was a *Weiner* v. *Gill* intention, and the appeal was therefore on broader lines, namely, that the obtaining of the goods was by false pretences, which gave a voidable title which had not been avoided. It was held by the Court of Appeal that the article having been given to the fraudulent Bruford with the intention that he should have power to pass property in it to a third party, it was a case of obtaining by false pretences and the third party got a good title. This decision presents considerable difficulty, because it appears to have been assumed that a person who has power to pass property to another has impliedly power to pass property to himself by pledging. In other words it seems to bring a mercantile agent into the same position as a buyer under r. 4 of s. 18, and if so where is the need for the Factors Act?

The position was made quite categorical by the decision in *Folkes* v. *King* [1923] 1 K.B. 282. To some extent that case turns on the question whether goods obtained by a mercantile agent by a fraud amounting to larceny by a trick can be said to be in his possession with the consent of the true owner within the Factors Act. Opinions previously

had been markedly divided, and in particular Fletcher Moulton, L.J., in *Oppenheimer* v. *Frazer & Wyatt* [1907] 2 K.B. 50, and Kennedy, L.J., in the same case, and in *Oppenheimer* v. *Attenborough* [1908] 1 K.B. 221, held that in such circumstances the consent was negatived. The Court of Appeal, however, in *Folkes* v. *King*, unanimously held that the case was nonetheless within the Factors Act, and in that Swift, J., in *London Jewellers* v. *Sutton*, considered himself bound. But the decision also went upon the ground that if a person is given authority to pass the property in a thing in circumstances which fall short of larceny by a trick, he has a voidable title, which enables him, until it is avoided, to give good title to a third party. It is of interest to observe that in that case Greer, J., as he then was, had given a decision in favour of the original owner, just as Swift, J., did in the *London Jewellers' Case*, and in the latter case Greer, L.J., indicated that he still had a personal attachment to the view that there was no protection afforded where the intention of the thief was from the first to be a thief.

The desirability of getting the whole chain of these reviewed by the highest court is shown by the decision of the House of Lords in *Lake* v. *Simmons* [1927] A.C. 487, and in particular by the opinion of Lord Sumner delivered in that case. The facts, though the action was on an insurance policy, were curiously similar to those in *London Jewellers* v. *Sutton*, and were summed up by Lord Sumner at p. 504: "Ellison . . . took them as a thief and with no more consent on his part than if she had picked his pocket," words which find a distinct echo in Swift, J.'s judgment in *London Jewellers*. Again, at p. 510, he said, "On the bearing which apparent consent obtained by a trick may have on the consent which is mentioned in s. 2 of the Factors Act there has been so signal and so indecisive a conflict of authoritative opinion that I should be loath to offer any conclusion of my own," a statement which seems to throw the whole topic open again. Moreover, consent to possession may well be one thing, and an intention to pass property quite another. If it is held that wherever there is an authority to pass property to a third person there is power to pass property to oneself, it becomes very hard to see what difference there is between a buyer within the meaning of r. 4 of s. 18 and a mercantile agent, with power to confer property on another by a contract binding on his principal. It may well be that the presence of "appro" notes makes it impossible to class the person as an agent, as Greer, L.J., clearly put it, even though the oral evidence as to intention is all one way, but the fundamental distinction is far from clear.

## Saturday Afternoon as a Holiday.

A HALF-HOLIDAY (whether customary or statutory) is not included in the term "holiday" unless expressly mentioned. This was recently emphasised in *Hain Steamship Co. Ltd.* v. *Sociedad Anomina Commercial de Exportacion e Importacion* (*Louis Dreyfus & Cia*), of Buenos Aires (78 SOL. J. 384). The shipowners claimed £42 10s. as dispatch money overpaid on time saved in loading grain at San Lorenzo, Rosario and La Plata for a voyage to Antwerp or Rotterdam. The charter-party provided that the steamer should be loaded at a certain rate (Sundays and holidays excepted) and dispatch money was to be paid, at £15 a day, for all time saved in loading—even including Sundays and holidays saved. The lay days began on the 14th November, 1932, and the time allowed (for loading 7,607 tons) was 24 days 20 hours. Nevertheless the cargo was actually loaded by the 1st December, and the question arose, how much time had been saved? The charterers' case was that (1) under Argentine law it was illegal to work on Saturday afternoons; (2) the lay days therefore did not expire until the 19th December; (3) having saved 18 days 3½ hours, they were entitled to £272 13s. 9d. The shipowners contended, however, that (1) Saturday afternoons were not "holidays," and the lay days therefore expired on the 16th December; (2) the time saved was only 15 days 7½ hours, in respect of which the amount due was £229 13s. 9d.; (3) the difference of 2 days 20 hours entitled them to repayment of the amount claimed. The arbitrator decided in favour of the shipowners, and the award was upheld by Mr. Justice MacKinnon, on the grounds that (*a*) the charterers' construction could only have been supported if the lay days had been for a specified period—"Sundays and holidays and Saturday afternoons excepted"; (*b*) as Saturday afternoons were not expressly mentioned as holidays, their inclusion as such could not be implied—merely because loading was then illegal; (*c*) Saturday afternoons were not to be excluded from the computation of lay days, and the shipowners, being only liable for dispatch money for the shorter period, were entitled to the amount claimed.

A similar decision (with regard to customary half-holidays) had previously been reached in *Love and Stewart Ltd.* v. *Rowtor Steamship Co. Ltd.* [1916] 2 A.C. 527, in which the respondents claimed £305 15s. 5d. as demurrage for 6½ days in respect of the s.s. "Glamorgan." Having loaded pit props at Kristinestad, Finland, the vessel had commenced discharging at Newport, Mon., on the 18th July. The cargo was not completely unloaded until the 9th August, and the shipowners (the respondents) contended that the charterers had taken 19½ days—instead of the thirteen lay days—and were therefore liable for 6½ days' demurrage. The charterers contended that (1) according to the custom of the port at Newport, the discharge of pit props was suspended during wet weather and on Saturday afternoons; (2) the latter should be deducted from the time taken for discharge, which (after allowing also for Sundays and the bank holiday) had only occupied thirteen days, as allowed by the charter-party. It was held by the Lord Ordinary (Lord Hunter) that the shipowners were only entitled to two and a half days' demurrage, but they were awarded the full amount by the Second Division of the Court of Session, viz., the Lord Justice-Clerk and Lords Dundas, Salvesen and Guthrie. The charterers' appeal was allowed, however, in the House of Lords, where Lord Sumner observed that "the exception in the charter is clearly based on days, not on parts of days. I do not think the term (i.e., 'holidays') extends to the latter part of a week-day, on which it is usual not to work, although we all call it and enjoy it under the name of a Saturday half-holiday." Lords Parker of Waddington and Wrenbury agreed that (1) the charterers were entitled to seventeen, not thirteen, lay days at Newport, but (2) as they could not deduct wet days and Saturday afternoons, the ship had nevertheless been on demurrage, but only for half a day. The decision of the Court of Session was therefore reversed, and the interlocutor of the Lord Ordinary was restored—with the variation that the shipowners were not entitled to £117 12s. 1d., but to £23 10s. 5d. only.

In view of these cases, it is interesting to observe that, at Folkestone (on the 1st May, 1934), the annual conference of the National Chamber of Trade considered a proposal to make a Saturday half-holiday universal throughout the country. It was pointed out that, except in resorts and towns where there were Saturday markets, the only people who worked on Saturday afternoons were shop assistants and refreshment or amusement caterers. The motion was nevertheless reported as having been defeated by an overwhelming majority.

### MINISTRY OF HEALTH APPOINTMENTS.

The Minister of Health, The Right Hon. Sir Hilton Young, G.B.E., D.S.O., D.S.C., M.P., has appointed Mr. T. W. Williams to be his Assistant Private Secretary.

The Parliamentary Secretary to the Ministry of Health, Mr. G. H. Shakespeare, M.P., has appointed Mr. G. J. M. Gray to be his Private Secretary.

The Deputy Secretary to the Ministry of Health, Mr. E. J. Maude, C.B., has appointed Mr. F. L. Edwards to be his Private Secretary.

# Costs.

## ALLOWANCES FOR INSTRUCTIONS.

THE allowances for "instructions" are set out in App. N, Nos. 62 to 83 inclusive, and "Practice Masters' Notes" (1902), No. 67. Rule 27 (1) of Ord. LXV gives the taxing master power to increase the allowance for instructions in respect of special endorsements, special cases, pleadings, special affidavits, and admissions, whilst r. 27 (4) makes similar provision in respect of the items of instructions to sue or defend, or the preparation of briefs. The wide terms of r. 27 (29) must not be overlooked either, for this sub-rule gives the taxing master discretion to allow such costs, charges and expenses as shall appear to him to have been necessary for the proper attainment of justice. Note in particular that this sub-rule enables the taxing master to increase the scale of costs set out in App. N, notwithstanding that some of the items are especially marked "not to exceed" or "not exceeding." Note further, that it has been specifically held that he has no power to decrease the charges: see *Price* v. *Clinton* [1906] 2 Ch. 487.

The item under the heading of "Instructions" which gives the greatest trouble, perhaps, is that which relates to the brief on a trial. This item has already been treated fully earlier in this series (76 SOL. J. 281), and it will suffice if we observe here that the discretion of the taxing master in respect of this item is almost unfettered and, unless he has palpably misdirected himself, his decision will not be upset. He must have regard not only to the documents used, and the number of witnesses called, but he may also pay due regard to the importance of the point in issue and the responsibility of the solicitor conducting the case: see *London, Chatham and Dover Railway* v. *South Eastern Railway* (1889), 60 L.T. 755. Further, it will be observed that items 81 to 82 of App. N make provision for an allowance for instructions for brief only on trial of action upon notice of trial or notice for judgment given, so that no such allowance will be granted under these items in respect of a brief on an originating petition. Nor will any allowance for instructions for brief be made in respect of interlocutory applications, except on a motion for injunction, when 13s. 4d. is customarily allowed, or on a brief on an examination of witnesses, when one guinea is allowed. By virtue of item 82A an allowance of one guinea is made for instructions for brief on the hearing of an originating summons, or a summons under the Companies Act.

There are numerous other items which carry a fee for "instructions" and it will be convenient to deal briefly with these, since there is often misapprehension as to the appropriate allowance, and frequently some doubt whether the items carry an allowance for "instructions" at all.

At the outset it may be noted that no allowance has been provided in App. N, nor will any allowance be made, for that matter, in respect of such items as a case to counsel to advise during the course of the action, to initiate or appear on a motion, not being an originating motion, or other interlocutory proceedings such as summonses or applications, brief on appeal, except where witnesses are to be examined, nor is any allowance made for drawing instructions to counsel to settle a document drawn by a solicitor. In this connection it may be noticed that a fee is usually allowed for drawing instructions to counsel to settle documents drawn by the opposite party's solicitor, such, for instance, as a statement of facts. Similarly, no such allowance will be made in respect of particulars and conditions of sale and abstracts of title. Although no comprehensive fee for "instructions" will be allowed in these instances, it will be observed that proper charges in respect of letters to and attendances on the parties will be allowed where they are necessary, not only between solicitor and client, but also, in certain special cases, between party and party.

The first allowance under the heading of "Instructions" in App. N is item 62, which grants an allowance of 6s. 8d. for instructions to sue or defend. It will be noticed in passing that all the references here are to the lower scale. This fee, like all of the others, may be increased in special cases in the discretion of the taxing master. The only exception to this fee of 6s. 8d. as instructions to initiate or appear to proceedings is in the case of instructions to act on arbitration, when a fee of two guineas is generally allowed, whether the arbitration is under the Lands Clauses Acts or the Arbitration Act. The fee of 6s. 8d. applies to instructions for interpleader proceedings except in the case of a sheriff who is interpleading: see *James* v. *Ricknell* (1887), 20 Q.B.D. 164.

A fee of 13s. 4d. is allowed in respect of instructions for a statement of claim or a special case, and this fee applies in the case of points of claim in commercial actions and to a statement of claim specially endorsed on a writ, where there is no subsequent statement of claim delivered: see items 63 and 64 of App. N.

There are numerous other important points in connection with this item of "instructions," and these will be reviewed in our next article.

# Company Law and Practice.

**Income Tax and Liquidator's Remuneration.**

THE case of *Re Beni-Felkai Mining Co. Ltd.* [1934] 1 Ch. 406, is one in which the facts are somewhat complicated, and require some little study before they can be mastered, but it is nevertheless one which I should prefer not to pass over, as it is of some interest in relation to one particular aspect of winding up. It is a claim by the Crown for income tax in the winding up of an insolvent company, and raised the question of priority between the Crown and the liquidator in respect of his remuneration. It is one of those cases in which the liquidation commenced prior to the 1st November, 1929, and therefore the old rules and statute are applicable, but for our present purpose we need draw no distinction.

The report also contains a reminder for those who would seek to pray in aid of their claim in the liquidation any general principles of equity or natural justice or any similar straw of the kind at which those in danger of drowning are apt to clutch. In the course of the argument Maugham, J., as he then was, expressed his inability to see the logic of a certain power vested in the court, and it was then suggested to him that the court derives the power from the principle that the company taking the benefit of something (in this case the services of the liquidator) must bear the burden of their being paid for. But Maugham, J., would not have this. "No," he says, "the court is dealing, not with equities, but simply with statutes and rules. A liquidation is not necessarily fair."

This is a plain statement, but one has only to listen to the company summonses being argued to realise that it is frequently overlooked. It may not be out of place to refer here to another point which the same learned judge made not so very long ago: it is not *à propos* the present case at all, but it is a point which again is perhaps rather apt to be overlooked. Under s. 265 of the Companies Act, 1929, certain acts done by a company are to be deemed to be a fraudulent preference; and the learned judge has, on at least one occasion, drawn attention to the fact that a fraudulent preference is not necessarily morally reprehensible; indeed, cases can well be imagined where a moralist would be bound to approve an act which the law would deem to be a fraudulent preference. What is really required is a new name for this operation which the law condemns.

I fear I have digressed considerably. Let us return to *Re Beni-Felkai Mining Co. Ltd.* Probably the best way of

drawing my readers' attention to the points in issue is, first of all, to refer to the relevant sections of the Act. Under s. 213 (I refer throughout for convenience to the sections of the 1929 Act) the court may, in a compulsory winding up, if the assets are insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the court thinks just. That power a creditor may ask the court to exercise in a voluntary winding up, by virtue of the provisions of s. 252.

Section 254 provides that in a voluntary winding up all costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, are to be payable out of the assets of the company in priority to all other claims. As a corollary to s. 213 must be added r. 192 of the Winding Up Rules, 1929, which is only applicable to a compulsory liquidation, and even then is subject to any express provision made by the court under s. 213. This rule is as follows :—

> " The assets of a company in a winding up by the court remaining after payment of the fees and expenses properly incurred in preserving realising or getting in the assets . . . shall, subject to any order of the court . . . be liable to the following payments, which shall be made in the following order of priority, namely : First, the taxed costs of the petition,"

and then there follow various matters and quite low down in the list comes the remuneration of the liquidator. It is only necessary to add that in that list, before the remuneration is this :—

> " Next, the liquidator's necessary disbursements, other than actual expenses of realisation heretofore provided for."

It is now necessary to make an endeavour to understand the material facts. The company owned certain mining and transport concessions in Algeria, which were granted by the French Government. In 1925 it was decided to transfer the business to two French companies, one for mining and the other for transport ; excepting only from the transfer cash and other assets believed to be sufficient to repay the preference capital in full. This was arranged, and the company went into voluntary liquidation on 30th December, 1925, appointing the manager of the company liquidator at a salary of £1,000 a year. Things did not, however, go as well as had been anticipated, and it was only possible to carry out the scheme by allowing the two French companies to work the mines and the transport facilities respectively by means of moneys provided by the company through realisation of the company's ores. It should be mentioned that, prior to the difficulties arising, the preference shareholders were paid out of the excepted assets the sum of 5s. in the £, which turned out to be all there was available for them.

The ores sold realised about £170,000 and the disbursements of the liquidator, including his remuneration at the rate of £1,000 a year, travelling expenses, and other salaries and expenses, amounted to about £171,000, so that there was a deficiency represented by a bank overdraft. During the realisations the Crown from time to time made assessments to income tax under Sched. D for the years 1926-1927 and 1929-1930, and the Crown took out a summons in the liquidation asking for an order on the liquidator to refund to the company, out of the moneys which he claimed to retain as remuneration, the assessed amounts of income tax, any other claims payable *pari passu* with the income tax, and the costs of the application, and that out of those sums the income tax and costs might be paid.

In effect the contention of the Crown was that the liquidator was not entitled to retain any part of his remuneration until the income tax was paid. This is the line of reasoning : Income tax incurred in the course of liquidation is an expense of the liquidation ; it cannot be a liability so as to be the subject of a proof in the liquidation, or so as to be one of the preferential debts within s. 264. Accordingly it must be part of the costs of the liquidation and must be provided for under s. 254. Further, it was argued that expense incurred in earning profits (which income tax is) is an expense within s. 254, and if not that, it is a necessary disbursement within the rule to which I have referred above.

This is what Maugham, J., says, in the course of his judgment, at p. 418 : " I have a difficulty in seeing how a liquidator, who, in the course of his liquidation carries on the business of the company at a profit, the consequence being the assessment of the company to income tax, can avoid the conclusion that this is one of the expenses in the winding up." On the next page he further says : " In my opinion, then, the sums in question are sums which can be properly treated as expenses in the liquidation."

His lordship then decided that it was open to him, by virtue of the provisions of s. 213, in the exercise of a just discretion, to make an order as to the payment of the costs, charges and expenses, including the liquidator's remuneration, in such order as the court might think just. Then at page 422 there is a passage which requires quotation *in extenso*, as it contains a statement of the law which ought to be borne in mind : " *Prima facie* and in a normal case my opinion is that the whole of the expenses of the winding up ought to be paid before the remuneration of the liquidator. It seems to me, in the normal case, expenses which he has incurred, whether by the employment of agents or, for example, in respect of gas and electric light or for rents, or any other of the numerous expenses which he may incur in the winding up of a company, are things for which he is bound to provide out of the assets of the company as far as he is enabled to recover them. If his position is that, having provided for them, there will be no remuneration left for him, then he is entitled to say : ' I cannot go on unless the creditors or shareholders or others will put up a fund for my benefit.' " His lordship goes on to point out that there may be cases in which the court would, under s. 213, provide for the liquidator's remuneration to the extent to which his services represent salvage, in a case where the realisation of property has been delayed or become impossible. In the case before him Maugham, J., then held that the remuneration up to a particular date should not be disturbed, and directed an inquiry as to what remuneration was proper subsequent to that date in respect of services rendered which might fairly be regarded as necessary for the preservation of the company's property.

This case is one which will repay study by those who are concerned with the remuneration of liquidators.

## A Conveyancer's Diary.

**Trustees for Sale—Power to Partition.**

THE case of *Re Brooker ; Young* v. *Public Trustee*, which, so far as I can find, is only reported under the heading of " Notes of New Decisions " in the *Law Times Journal* for 2nd June, at p. 383, is of considerable interest, especially as Eve, J., appears to have refused to follow Farwell, J., in *Re Thomas* [1930] 1 Ch. 194.

Judges in the Chancery Division have so often said that they intended to follow each other in cases relating to the " New Law of Property Acts " that it would have been thought that when that practice was departed from it would at least have been considered worthy of report in the W.N. There is, however, no report of *Re Brooker* there. Let us hope that the case may find its way into the Law Reports, which it certainly should.

The actual decision in *Re Brooker* may not affect many cases, but indirectly it may be of far-reaching importance. A full report of the case will be awaited with much interest by those of us who are concerned with the 1925 Law of Property legislature.

I must go back to *Re Thomas*.

That was not a very satisfactory case in some respects. It was obvious that counsel who argued it did not really want a decision one way or the other on the main point at issue, but were relying upon the learned judge to do (what, in fact, he did), namely, to exercise his discretion under s. 57 of the Trustee Act, 1925. So the parties got what they wanted, although at the expense of a decision which I always thought was wrong and which Eve, J., has now declined to follow.

The facts in that case were that under the will of a testator and in the events which happened, his residuary estate (which comprised freehold and leasehold property) was held on the 31st December, 1925, upon trust as to a moiety for a son absolutely; one-fourth was settled upon a daughter and her children, and the remaining one-fourth was similarly settled upon another daughter and her children.

The will gave the trustees a very wide power of appropriation, enabling them, with the consent of a majority in number of the testator's adult children and grandchildren for the time being interested in possession or expectancy in his residuary estate, to allot or appropriate specifically any part of his estate (real or personal) in or towards the satisfaction of the share or shares of the children or grandchildren in the residuary estate and to determine the value for such appropriation or allotment.

Farwell, J., held that the power to appropriate or partition was gone altogether, being overridden by the statutory trusts which applied. Any such power, his lordship held, was *pro tanto* in defeasance of the trust for sale imposed by the statute in the case of undivided shares.

His lordship in his judgment professed to follow the decisions in *Bernhardt* v. *Galsworthy* [1929] 1 Ch. 549, and *Re Flint* [1927] 1 Ch. 570.

As I have pointed out before, the powers sought to be conferred in those cases were powers conferred upon other parties, who, by the exercise of their powers, might interfere with the statutory powers of sale of the trustees. But in *Re Thomas* the power to partition was conferred upon the trustees themselves, giving them an alternative method of distributing the estate.

In this connection it is necessary to look at s. 28 (1) of the L.P.A. (as amended by the Amendment Act of 1926):—

> "Trustees for sale shall in relation to land or to manorial incidents and to proceeds of sale have all the powers of a tenant for life and the trustees of a settlement under the Settled Land Act, 1925, . . . *and where by statute settled land is or becomes vested in the trustees of the settlement upon the statutory trusts, such trustees and their successors in office shall also have all the additional or larger powers (if any) conferred by the settlement on the tenant for life, statutory owner or trustees of the settlement.*"

The italicised portion of the sub-section was added by the L.P. Amendment A., 1926.

Farwell, J., held that the power to partition was not an "additional or larger power," and that it was overridden by the statutory trusts.

I have never understood that decision.

If the power to partition is not an "additional or larger" power, then I do not know what is or could be. The amendment added by the Amendment Act would appear to be of no effect at all.

The matter does not end there, however, for there is still s. 28 (3) to be considered, and it was upon that sub-section that *Re Brooker* seems to have been decided. The sub-section reads:—

> "Where the net proceeds of sale have under the trusts affecting the same become absolutely vested in persons of full age in undivided shares (whether or not such shares may be subject to a derivative trust) the trustees for sale may with the consent of the persons, if any, of full age, not being annuitants, interested in possession in the net rents and profits of the land until sale—
>
> "(*a*) partition the land remaining unsold or any part thereof; and
>
> "(*b*) provide (by way of mortgage or otherwise) for the payment of any equality money;
>
> and upon such partition being arranged the trustees for sale shall give effect thereto by conveying the land so partitioned in severalty . . . to persons of full age and either absolutely or on trust for sale . . . in accordance with the rights of the persons interested under the partition . . ."

Farwell, J., held in *Re Thomas* that this sub-section also did not apply as two of the shares were settled, and therefore not "absolutely vested."

As I have said before, if "absolutely vested" means "absolutely entitled," the sub-section is quite useless, for, of course, if all the persons interested are absolutely entitled they can agree to anything they like. It does not need any statutory authority for that.

Now to turn to *Re Brooker* (I quote from L.T.Jo.). A testator T.E.B. by his will dated in 1921 gave to his wife the rents of the property owned by him jointly with his brother J.B. and directed that after her decease it should be divided between his brothers and sisters, including J.B. The testator died in 1923. Under the transitional provisions of the L.P.A., 1925, the properties became vested in the Public Trustee upon the statutory trusts. J.B. by his will devised all his real and personal estate to trustees upon trust for sale, subject to a proviso that his trustees were not to sell any part of the real estate until the death of the survivor of his children, the income being divided in the meantime between his children. There was an ultimate trust of capital in favour of the issue of his children. J.B. died in 1929.

Trustees of the properties for the purposes of the statutory trusts were duly appointed in the place of the Public Trustee.

The beneficiaries under the will of T.E.B. desired that the properties should be sold; the beneficiaries entitled under the will of T.B. wished their share in the properties to be retained unconverted during the lifetime of his children in accordance with the direction contained in his will.

It was arranged between the Public Trustee and the trustees of T.B.'s will that the properties should be partitioned.

A summons was taken out for the purpose of deciding whether there was power to make a partition under s. 28 (3) of the L.P.A., 1925, and Eve, J., held that the trustees for the purposes of the statutory trusts had power to make a partition with the consent of the personal representatives of both the testators. It is stated that *Re Thomas* was not followed, as indeed is evident, for the personal representatives, although the shares were absolutely vested in them, were not absolutely entitled.

I hope that we are to have a full report of this case. The judgment of Eve, J., should be instructive and is sure to be interesting.

## Landlord and Tenant Notebook.

**Recontrol and Registration.**

A CORRESPONDENT has kindly drawn my attention to a conflict between two county court decisions interpreting the proviso to s. 2 (2) of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933. These are: *Stokes* v. *Little*, reported in "Our County Court Letter" of the 12th May (78 SOL. J. 332), and *Goldsbrough* v. *Quayle* (1934), Law Journal C.C.R. 157. Our correspondent's letter concludes with "What are unfortunate practitioners to do in the circumstances?" which I read as a rhetorical question; if this interpretation is wrong, perhaps the following discussion will be of some use.

Both actions were claims for possession of Class C houses, i.e., of dwelling-houses which the previous sub-section, defining them by reference to rateable value on the appointed day, removes from the scope of s. 2 of the 1923 Act. The latter enactment, it will be remembered, provided for decontrol by actual possession or by acceptance of two-year term. In both actions it was shown that the houses had at some time become decontrolled accordingly, but that they were let on 17th July, 1933, so that they came within the purview of the main enactment of s. 2 (2) of the 1933 Act: "If the landlord of any dwelling-house let as a separate dwelling immediately before the passing of this Act, being a dwelling-house of which the rateable value on the appointed day . . . claims that by virtue of the provisions of the said section two of the Act of 1923 the principal Acts had ceased to apply to the dwelling-house before the passing of this Act, he shall within three months after the passing of this Act make to the council of——application in the prescribed form for the registration of the dwelling-house"—so begins the sub-section, and in neither case had the direction been obeyed by the plaintiff. No criminal offence was thereby committed, however; the only sanction is contained in what follows: "and if in any proceedings with respect to any dwelling-house which is . . . such a dwelling-house as aforesaid, it is proved that but for the provisions of the said section two of the Act of 1923 the principal Acts would have applied to the dwelling-house and that no such application has been made by the landlord within the time aforesaid, the dwelling-house shall, *subject as hereinafter provided*, be deemed to be a dwelling-house to which the principal Acts apply."

So now the plaintiffs' only hope is in the "hereinafter," and this brings us to the proviso: "Provided that if, on application to the county court . . . the court certifies that there was reasonable excuse for the failure to make application within the time aforesaid and application for registration is made within seven days after the certificate has been granted, then, if the principal Acts had ceased to apply to the dwelling-house before the passing of this Act, *section two of the Act of* 1923 *shall . . . apply* to the dwelling-house *as from the date on which the application* for registration is made."

In each case the plaintiff had been granted a certificate of excuse and had duly registered the house within the seven days, and the question for determination was how and how much did that help him? Was the effect to re-decontrol the house; or was it that, though in Class C, the house would become decontrolled only if the landlord obtained actual possession or the tenant accepted a two year agreement?

In *Stokes* v. *Little* the learned county court judge of Bow County Court came to the second of the above conclusions, holding that the belated registration merely made the house potentially free. This seems to me to be the correct interpretation, having regard to the concluding words of the proviso which I have italicised, and to the fact that the object of the section as a whole was to arrest the decontrolling of Class C houses.

So I will now proceed to examine, and respectfully to criticise, the considered judgment delivered by the learned county court judge of Middlesbrough County Court in *Goldsbrough* v. *Quayle*.

His honour commenced by referring to what authority there was. This consisted of Circular No. 1348 issued by the Ministry of Health, which says, in terms, that if a house be occupied at the time of the late registration, the sitting tenant remains protected, and the landlord will have to wait until he again comes into possession. The learned judge surmised that this opinion was based on the proviso saying that s. 2 of the 1923 Act *shall* apply, and not saying that the Rent Acts shall *cease* to apply.

But such a circular does not, of course, bind a court of law, and the contrary view had already been taken by two other county courts, those of Penrith and Edmonton, in decisions reported in the *Estates Gazette*.

So much for existing authority. His honour then observed that the penalty which would be imposed by accepting the Ministry's view would be unduly severe. This remark was not, of course, intended to be decisive of interpretation; and my criticism would be that this consideration is relevant only to the question of leave to apply for registration, which is in the discretion of the court. And the fact that such leave is to be granted only in cases where "reasonable excuse" indicates that failure was not meant to be taken lightly.

But the learned judge's conclusion is drawn, by implication, from the last words of the sub-section preceding the proviso. Failing timely registration, the "dwelling-house shall, subject as hereinafter provided, be deemed to be a dwelling-house to which the principal Acts apply." The judgment runs: "Therefore *per contra*, as it seems to me, if the proviso applies, the premises will *not* be deemed to be a dwelling-house to which the principal Acts apply. Be it noted that the application for registration (Rent Restriction Rules, 1933) is for the registration of the house in question 'as a house to which the Acts had ceased to apply prior to July, 1933.'"

Now in my respectful submission, this reasoning errs in assuming that a proviso to a sub-section must enact, as regards its subject-matter, the exact opposite of what the main body of the sub-section enacts. To say that by implication the houses registered by leave are to enjoy the same status as those registered in time is to ascribe to a proviso the selfsame function as that usually discharged by an exception. When your legislator says "except," one can normally expect this result; the subject-matter is divided into two classes, and what applies to the one is the exact opposite of what applies to the other. But when your legislator employs a proviso, something more subtle may be expected, as the very form suggests: a colon, a new paragraph, and a capital seem to indicate an impressive pause, a deep breath, and a clearing of the throat, and qualification by subtraction or even addition may follow. So that his honour's "*per contra*," which would aptly clinch an argument when only two classes were concerned, seems to me to be out of place when construing this proviso. For while formerly the important distinction was between houses to which the Acts applied and houses to which they did not, the main purpose of the amending Act of 1933 is to provide for decontrol of different classes of houses. The division is *threefold*, and the *ratio dividendi*, drawn by reference to value in April, 1931, classifies houses as follows: houses decontrolled at once; houses to be decontrolled on actual possession being obtained or a two-year term being accepted or at Midsummer, 1938; and houses to be decontrolled at and not before Midsummer, 1938. But what was to happen to houses belonging by value to the third of the classes but already outside the Acts? There are three, not two, possibilities: leave them decontrolled; recontrol them till possession or two-year term or Midsummer, 1938; recontrol them till Midsummer, 1938. What Parliament has done is to leave them decontrolled *if not let* immediately before 18th July, 1933. Then, by this sub-section, if they were then let, their status depends on the action or inaction of the landlord. By timely registration he ensures continued decontrol. By complete failure to register, he brings about recontrol till 1938. But if he can satisfy the court as to reasonable excuse, and then registers, the house is placed in the intermediate class: decontrol on possession, two-year term, or Midsummer, whichever happens first.

The passage from the 1933 Regulations cited by the learned judge does not seem to carry the matter any further. Indeed, one feature of those Regulations tends to support the view taken in *Stokes* v. *Little*, namely, the provision that applications for a certificate of excuse shall be made *ex parte*. It would, I suggest, be contrary to the spirit and policy of our law if those immediately affected by such applications and

who may have or may be alleged to have encouraged delay were not entitled to be heard; hence the Regulations, at all events, contemplate that the sitting tenant cannot be prejudiced by the grant of the certificate.

## Our County Court Letter.

### THE RIGHTS AND LIABILITIES OF ARTICLED PUPILS.

In the recent case of *Jones and Roberts* v. *Gibson*, at Newton Abbot County Court, the claim was for £100 as damages for wrongful dismissal of the second plaintiff, who was the son of the first plaintiff, and had been articled to the defendant. The latter was an auctioneer, and counter-claimed £50 in respect of damage to his business by reason of the misconduct of the second plaintiff. The defendant's case was that the second plaintiff often left the office without permission, was unduly familiar and disrespectful, gave himself airs (so as to exaggerate the importance of his position) and directly or indirectly asked for presents. His Honour Judge The Hon. W. B. Lindley (in a reserved judgment) observed that (1) although the second plaintiff did not know how to behave to clients, he was inexperienced and he had gone to the defendant to learn the business—including the correct behaviour to clients; (2) it was an exaggeration to have described the second plaintiff as "a persistent cadger," and there was no charge of dishonesty; (3) although his manner gave offence, the second plaintiff had not intended to be rude or insolent, and the defendant had not appreciated the difference between an ordinary clerk and one who had paid for instruction; (4) the second plaintiff's manner and conduct were not so bad as to render impossible a continuation of the relationship of master and apprentice; (5) nevertheless the defendant had lost one client through the conduct of the second plaintiff. Judgment was therefore given in favour of (*a*) the first plaintiff for £35 and costs; (*b*) the second plaintiff for £21 and costs; (*c*) the defendant for £15 against the first plaintiff, with costs—except those of one adjournment.

### FIRE BRIGADES AND RICK FIRES.

A charge may be made for the attendance of a borough fire brigade outside the district of the local authority by which it is maintained, and the amount may be recovered either in the county court or before the magistrates. The jurisdiction of the county court is conferred by the Public Health Act, 1875, s. 261, and the County Courts Act, 1903, s. 3, whereby the amount recoverable was raised to £100. The magistrates have jurisdiction (to any amount) by virtue of the Town Police Clauses Act, 1847, s. 33, which includes the brigade of an urban district council (by virtue of the Public Health Act, 1875, s. 171) and also the brigade of a rural district council—under s. 276 of the latter Act. In the recent case of *Falmouth Corporation* v. *Brooks*, at Penryn, summary proceedings were taken for the recovery of £41 7s. 6d., the case for the complainants being that: (1) their brigade was called at noon on the 28th August to the defendant's rick (which was on fire outside the borough boundary) and the captain and eleven men were engaged from 12.15 until 8 p.m.; (2) the charges were in accordance with the scale of the National Fire Brigades Association, but (as the defendant had since paid three of the men) the net amount due was £37 5s.; (3) even if the defendant had not summoned the brigade, an order could still be made—if the bench were satisfied as to the reasonableness of the charges and the propriety of sending the brigade. The defendant's case was that (*a*) the charge was unreasonable, and—had she anticipated such an amount—she would have let the rick burn; (*b*) only the small rick (of about 10 tons) was saved, as the large rick (of about 20 tons) was burned. The chairman of the East Kerrier magistrates (Major G. Read) announced that the bench upheld the propriety of answering the call, but the amount recoverable would be fixed at £24 only. It is to be noted that the amount so fixed must be demanded from the defendant, from whom it may then be recovered (as damages) by distress—as the magistrates do not make a final order for payment. See *Rex* v. *Part* (1906), 70 J.P. 398. It transpired that the above brigade consisted of volunteers, who were compensated by the corporation for time lost from their ordinary work.

## RECENT WORKMEN'S COMPENSATION DECISIONS.

### DOMESTIC SERVANTS AND WORKMEN'S COMPENSATION.

In *Richardson* v. *Dixon*, recently heard at Darlington County Court, the applicant's case was that (1) she was fifteen years old, and was employed as a domestic servant at 3s. a week, with board and lodging—worth 10s. a week, (2) her duties included lighting the fire in a farmhouse, and—by reason of the difficulty in so doing—the defendant's wife had helped her by pouring paraffin on the fire from a jug, (3) her instructions were to use paraffin—if necessary—and she had done so on the evening of the 10th July when re-kindling the fire while there was no one in the house, (4) in consequence of her clothes catching fire, she had since spent seven months in hospital. The defence was that the accident was due to an added peril, and that it was not within the scope of the applicant's employment to light the fire with paraffin—the use of which was denied by the defendant and his wife. His Honour Judge Stewart gave judgment for the respondents.

### MOTOR CYCLISTS AND WORKMEN'S COMPENSATION.

In the recent case of *Bradley* v. *Winnington* at Worcester County Court an award was claimed of £500, the applicant's case being that (1) her late husband had been a carpenter on the respondent's estate, and (although his work normally ceased on Saturday at mid-day) he had returned to Stanford Court on a Saturday afternoon to mend a bell wire, (2) he had travelled the four miles by motor cycle, and—when he was 2½ miles on his way home—a chain broke and he had incurred fatal injuries. The respondent's case was that (*a*) the employment had ceased when the deceased left work for home, (*b*) it was not within the scope of his employment to ride a motor cycle. In view of the strength of this defence, His Honour Judge Roope Reeve, K.C., made an award (by consent) for £150 only (to be apportioned among the applicant and her three sons) with ten guineas costs. It transpired that the respondent (in view of the long service of the deceased) had induced the insurance company to make an *ex gratia* offer of the latter amount.

### NYSTAGMUS AND WORKMEN'S COMPENSATION.

In the recent case of *Woodhouse* v. *Conduit Collieries, Ltd.*, at Walsall County Court, compensation was claimed (at £1 a week) as from the 30th September, 1933—the date on which the applicant was certified as totally incapacitated by nystagmus. The evidence was that (1) having worked for the respondents for twenty-three years (at an average weekly wage of 30s.), the applicant was given fourteen days' notice (with about fifteen other men) on the 16th September last; (2) the certifying surgeon's decision was appealed against (by the respondents) and the medical referee (on the 23rd October) certified that the applicant was suffering from nystagmus, "but is not thereby disabled from earning full wages at the work at which he is employed"; (3) although about eight of the other men had resumed work, the applicant had been unable to find employment. It was stated by the agent to the Miners' Association (whose evidence was held to be admissible) that all the collieries in Cannock Chase and Pelsall required an applicant for work to sign a declaration that he had not suffered from miners' nystagmus. The

respondents' case was that they had not taken back one-third of the 150 men they had discharged, and that the applicant was not incapacitated by nystagmus. His Honour Judge Tebbs held that (*a*) there was no evidence that the failure to obtain work (after the 23rd October) was due to nystagmus; (*b*) the applicant was only entitled to compensation from the 30th September to the 23rd October. An award was therefore made of £1 a week (between the above dates) without costs. The result is that (1) if the medical referee certifies that the workman is not incapacitated by nystagmus, any subsequent refusal to employ him is attributable—not to nystagmus—but to the state of the labour market; (2) even though his incapacity may be indirectly due to nystagmus (owing to the attitude of prospective employers) he is debarred from obtaining compensation. Compare a similar decision noted (under the above title) in the "County Court Letter" in our issue of the 12th May, 1934 (78 Sol. J. 332).

## Correspondence.

[*The views expressed by our correspondents are not necessarily those of* The Solicitors' Journal.]

### Delay in Local Land Charges Registries.

Sir,—The most important feature of the working of this Act is that an official certificate of search should be received as near as possible by return of post. As far as the land charges registered at the Land Registry are concerned, there is very rarely any delay, and if there is likely to be any delay, an acknowledgment and explanation is always given. The same cannot be said, however, about local land charges. We have just had a case where we sent a requisition for an official search on the 23rd instant, and also a request for some additional information. We received an acknowledgment on the 26th instant, and were informed that the matter was receiving attention. On the 30th instant we received the official certificate, but were requested to communicate direct with another department with regard to the other information we required. The local Land Registry concerned was informed that the matter was an urgent one.

We shall be glad to know whether other practitioners have suffered in this respect, and also whether anything can be done to expedite these searches.

Wilkinson, Howlett & Moorhouse.

Bedford-street, W.C.2.
30th May.

### New Rules in Lunacy Procedure.

Sir,—Under s. 9 of the Administration of Estates Act, 1925, it is provided that where a person dies intestate his real and personal estate, until administration is granted in respect thereof, shall vest in the probate judge in the same manner and to the same extent as formerly in the case of personal estate it vested in the ordinary.

Under r. 44 (2) of the above Rules, it is provided that on the death of a patient and no order being applied for within six months from the death for payment of the deceased's funds to the person entitled, the Master may direct that any funds which belonged to the patient when he died and were not already in court, shall be lodged in court.

Having regard to the terms of s. 9 of the above Act, it is obvious that r. 44 (2) is *ultra vires*, for it purports to oust the statutory jurisdiction of the President of the Probate Division.

The above Rule does not state on whose application the Master may make the order or whether he will make it of his own volition.

Suppose that on the death of a patient it became known to the Master that the patient was entitled to stock inscribed at the Bank of England, of which he had no prior knowledge, would the Bank of England be bound by the Rule or by the Statute?

The operation of the Rule might, in certain circumstances, be an interference with the administration of statutory trusts for next-of-kin.

Suppose a patient died intestate possessed of property unknown to the Lunacy Office, and a next-of-kin obtained a grant of administration and took possession of such property, but for six months did not apply to the Lunacy Court for possession of property under its control, the Master could order that the property in the hands of the administrator be transferred into court! How would such property be then dealt with? Would the Master want to administer it, regardless of the rights of the administrator or would he say, I shall keep it until you apply for what I have under my control? The result might be that the administrators' legal rights would be entirely defeated.

41 Moorgate, E.C. E. H. L.
31st May.

### Income Tax and Repair Allowances.

Sir,—The paragraph on this subject in the issue of 26th May has been read with interest. Without taking up your space with anything of the nature of discussion, it may be of some use to note the following aspects.

(1) In Sched. A, No. VIII, r. 4, "annual sum" is, for the purpose of that rule, defined to include rent. In r. 11 of the same, No. VIII, that word rent does not occur.

(2) If the overlandlords (Egyptian House Properties) have executed external repairs in the year in question, they suffer more tax than tax at the standard rate on the rent of £550.

(3) That result could not have come about if sub-letting had been validly prohibited.

(4) Is the net result of the case to show that a prohibition against sub-letting has a value which has probably not previously been appreciated?

Edinburgh. Burns & Waugh.
29th May.

## Reviews.

*Everyday Statutes Annotated. Consolidated Supplement of Statutes*, 1929 *to* 1933. Edited by The Hon. Dougall Meston, of Lincoln's Inn and South-Eastern Circuit, Barrister-at-Law. 1934. Royal 8vo. pp. viii and (with Index) 613. London: Sweet & Maxwell, Limited; Stevens and Sons, Limited. 25s. net.

This volume contains most of the more important statutes of the years 1929 to 1933. It is intended to be permanent and takes the place of the cumulative supplements which have been published during the past four years, and which were only temporary volumes. There is also a Noter-up published with it, which records judicial decisions and legislative amendments and repeals. The Noter-up is for use for this year only.

*The Burning of the Reichstag.* By Douglas Reed. 1934. Demy 8vo. pp. 352. London: Victor Gollancz, Ltd. 12s. 6d. net.

It was by the light of the burning Reichstag that the Nazis marched to power, and the proceedings at Leipzig which were its sequel will be remembered among the momentous trials of history. In time, it will be looked back to as one of the great unsolved mysteries of the past, intriguing historians as do L'Affaire du Collier and Le Masque de Fer. The present work is both a summary of the trial and a commentary on it—a dramatic review of the fifty-seven sittings of the court and of the personalities involved. The author actually witnessed

the outbreak of the fire, and was present throughout the case. The greater part of the book was written while the trial was actually in progress, a circumstance which gives it a special and permanent value as a record. To English observers, confused by the protracted character of the proceedings as well as by wholly unfamiliar rules of evidence and procedure, this lively and vivid sketch of accused and accusers, this lucid and brilliant synthesis of the real issues involved, is all but essential in a study of what may prove to be one of the most important events of modern times, as well as one of the most baffling.

*An Outline of the Constitutional Laws of the British Empire.* By E. SALANT, LL.B. (Lond.) 1934. Demy 8vo. pp. viii and (with Index) 239. London: Sweet & Maxwell, Ltd. 10s. 6d. net.

This is primarily a text-book for students who are taking this as their optional subject for the final LL.B. examinations of London University and for Bar students who have to study colonial government as part of the constitutional law required of them. Apart from the requirements of students, however, the volume should be useful to a wide circle of readers interested in the subject. It contains the actual texts of the Constitutions of Canada, Australia, South Africa and the Irish Free State, also of the Statute of Westminster, 1931. The ten chapters into which Mr. Salant has divided his work deal with these constitutions and discuss the Crown and the Prerogative, the Characteristics of Federalism, Dominion Status, and the Position of Protectorates and Mandated Territories. Altogether it provides a much-needed and serviceable volume for all concerned in these subjects.

*Recollections from a Yorkshire Dale.* By C. J. F. ATKINSON, M.B.E., LL.B., with a foreword by His Honour Judge DRYSDALE WOODCOCK, K.C. 1934. Crown 8vo. pp. 191. London: Heath Cranton, Limited. 3s. 6d. net.

The author is a country solicitor in Yorkshire, and this volume contains a number of very interesting stories of the dalesmen of Yorkshire by one of their own countrymen who understands them intimately. Anyone contemplating a holiday on the Yorkshire moors should take it to read *en route*.

*The Law Relating to Local Authorities.* By W. IVOR JENNINGS, M.A., LL.D., of Gray's Inn, Barrister-at-Law, Reader in English Law in the University of London. 1934. Royal 8vo. pp. clvi and (with Index) 991. London: Charles Knight and Co. Limited. Price 45s., post free.

This book contains an explanation of the Local Government Act, 1933, the law relating to local elections, and the law relating to local finance. The method adopted is that previously adopted by the learned author in his other well-known works, namely, each section of each Act of Parliament is printed as a whole and is followed by annotations which distinguish the sub-sections. Where, however, the section as a whole has needed general explanation, the author has added a note headed "General Effect." In dealing with the Local Government Act, 1933, there is a note to each section headed "Old Law"; this note explains the sources from which the section was taken and the extent to which the old law has been altered by the new provision, and the author remarks in his preface that if this note is used in relation to the two "Tables of Comparison," the reader will have no difficulty in determining how far the Act of 1933 is a consolidating measure and how far it alters the law. It is rightly pointed out that the reader must beware of assuming that the Local Government Act of 1933 is but a consolidating measure, for something approaching two-thirds of the sections contain innovations, and it is necessary for the reader to begin by assuming that on any subject changes have been made.

There are six introductory chapters. The first briefly outlines the sources of local government law; the second deals with the Local Government Act, 1933, describing its nature, its origin and its contents; the third describes the kinds of local authorities and the nature of a local authority; the fourth is on the subject of corporations; the fifth is a summary of the law of *ultra vires*; finally, Chapter 6 deals with proceedings against local authorities and contains a brief summary of the law relating to ordinary proceedings and the prerogative writs (mandamus—prohibition—certiorari). The annotations to the various Acts are concise but adequate for general purposes, while the index (which has been carefully prepared by the author himself) adds greatly to the usefulness of the work.

*Outline of the Law of Landlord and Tenant.* By EDGAR FOA, M.A., of the Inner Temple, Barrister-at-law. Fifth Edition. 1934. Crown 8vo. pp. 168. London: The "Law Times" Office. 7s. 6d. net.

The name "Foa" in connection with landlord and tenant is a sufficient recommendation of itself. This little volume is a reprint of six lectures delivered by Mr. Edgar Foa at the request of the Council of Legal Education, and the mere fact that the publication has run into a fifth edition shows how highly it has been appreciated. We have no doubt that the present edition will be found equally as valuable as its predecessors. There are of course no variations in the text.

*Taxation: Practitioners' Guide.* By G. B. BURR, F.C.I.S., and RONALD STAPLES. 1934. London: Gee & Co. (Publishers) Ltd. 7s. 6d. net.

The guide consists of an alphabetically arranged index of headings which deal shortly with main points in tax law and practice. Certain useful tables are also included. There are fifty-four loose-leaf pages in soft leather covers, so bound that supplementary pages can be added conveniently. It is a handy reference book, and it can be kept up to date on payment of an annual subscription of 3s.

*Hunter's Introduction to Roman Law.* Ninth Edition. 1934. By F. H. LAWSON, M.A., of Gray's Inn, Barrister-at-Law, Fellow and Tutor of Merton College, and All Souls Reader in Roman Law in the University of Oxford. Crown 8vo. pp. xvi and (with Index) 212. London: Sweet & Maxwell, Limited. 10s. net.

This is a useful book for students and for those who require an elementary knowledge of Roman law. The new edition has been considerably revised, and as it is only intended to serve as an introduction to the study of the subject, details which appeared in the earlier editions and which seemed to be unnecessary in such a work have been omitted. The subject-matter is set out in an interesting style.

*Faraday on Rating.* Fourth Edition, 1934. By PHILIP MICHAEL FARADAY and A. S. COMYNS CARR, K.C. Royal 8vo. pp. lxxx and 1,065 (Index, 184). London: The Estates Gazette, Ltd.; Sweet & Maxwell, Ltd. Price £3 3s., post free.

This book has the inestimable advantage not only of being a treatise on the law and procedure of rating, but of containing numerous specimen valuations, most of them the work of eminent experts given in evidence in rating appeals, with criticisms designed to assist the practitioner, in a way which can be found in no other book upon the subject.

The difficulties of procedure both within and without the Metropolis, under the Acts of 1869 and 1925, with subsequent amending Acts, are dealt with most lucidly; and we are of the opinion that no general practitioner can go to this book without finding everything he wants for the purpose of drawing notices of proposal and appeal and the cases for pleadings which have to be delivered where objection to assessments in the first place, and appeals to the higher courts in the second place, become necessary.

There are a number of text-books dealing with the legal aspect of the rating question only, but here we have the latest decisions of the courts in connection with the modern Acts fully set out, with the great advantage of Mr. Comyns Carr collaborating with an expert valuer, and jointly they have dealt with the application of those decisions to the practical side of the subject.

A comprehensive table of every reported de-rating case and a large number that are not reported, but have been culled from the authors' own notes, makes the perusal of the book worth while, if only from this standpoint alone; but the able language of the book, as far as the text is concerned, combined with extracts from the material Acts of Parliament, a reprint of the Statutory Rules and Orders thereunder, and the Rules of London Quarter Sessions embracing scales of costs for the purposes of taxation, brings within the two covers practically all the information required by the practitioner in this important and complicated subject. We recommend this book to our readers.

*Partnership Law in a Nutshell.* By J. A. Balfour, of the Middle Temple and the South-Eastern Circuit, Barrister-at-Law. 1934. Demy 8vo. pp. vii and 71. London: Sweet and Maxwell, Ltd. 3s. 6d. net.

This addition to the now familiar series of first-aid appliances for students follows the tradition of its predecessors, adequately covering the subject without exhausting either it or the reader.

*International Adjudications, Ancient and Modern.* Modern Series. Vol. VI. Edited by John Bassett Moore. 1933. Royal 8vo. pp. xxv and (with Index) 418. London: Humphrey Milford, Oxford University Press. 12s. 6d. net.

The previous volumes of this admirable collection have been already noticed in this Journal. This volume deals with the arbitration of the title to certain islands claimed by Great Britain and the United States. The case was decided by a mixed Commission appointed under the Treaty of Peace between those countries of 24th December, 1814. The arguments of the parties—most ably abridged—are very interesting and the short award is based on detailed evidence and careful interpretation of the true intent of the Treaty of 1783.

## Books Received.

*The Practice of Dominion Income Tax Relief.* By R. L. Renfrew, Solicitor. 1934. Demy 8vo. pp. vii and (with Index) 56. London, Liverpool, Birmingham and Glasgow: The Solicitors' Law Stationery Society, Ltd. 5s. net.

*Private Companies and the Avoidance of Tax.* By Stanley A. Spofforth, A.S.A.A., F.S.S. 1933. London: Gee & Co. (Publishers), Ltd. 6d. net.

*The Liability of Auditors.* By Sir Nicholas Waterhouse, K.B.E., M.A., F.C.A. 1934. London: Gee & Co. (Publishers), Ltd. 6d. net.

*The Merits of Mechanised Accounting.* By W. Desborough, O.B.E. 1934. London: Gee & Co. (Publishers), Ltd. 6d. net.

*Tax Cases.* Vol. XVIII—Part III. 1934. London: H.M. Stationery Office. 1s. net.

*The Juridical Review.* Vol. XLVI. No. 2. June, 1934. Edinburgh: W. Green & Son, Ltd. 5s. net.

*Stock Exchanges Ten-Year Record, 1924 to 1933.* Twenty-sixth Issue. 1934. Crown 4to. pp. 590. London: Fredc. C. Mathieson & Sons. 20s. net.

**[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London and Liverpool.]**

# Obituary.

### Sir MAURICE HILL.

Sir Maurice Hill, for many years one of the Judges of the Probate, Divorce and Admiralty Division, died at his residence at Wimbledon, on Wednesday, 6th June, at the age of seventy-two. Sir Maurice, who was educated at Haileybury, was an exhibitioner of Balliol College, Oxford, and was called to the Bar by the Inner Temple in 1888. He practised at the Commercial Bar, and he came to be regarded as an expert on marine insurance law. He took silk in 1910, and during the war he served as Chairman of the Ship Licensing Committee. In 1917 he was appointed a Judge of the Probate, Divorce and Admiralty Division. He had a serious breakdown in health in 1924, and in 1930 he retired from the Bench.

### Sir THOMAS GIBBONS, K.C.

Sir Thomas Clarke Pilling Gibbons, K.C., of Paper-buildings, Temple, formerly Advocate-General at Bengal, died at Brighton on Saturday, 2nd June, at the age of sixty-five. He was admitted a solicitor in 1891, and in 1897 he was called to the Bar by the Inner Temple. He took silk in 1913, and four years later he was appointed Advocate-General of Bengal. He resigned in 1921. The honour of knighthood was bestowed upon him in 1923.

### Mr. A. G. G. CODD.

Mr. Arthur Geoffry Gamble Codd, B.A., Barrister-at-Law, of Temple-gardens, Temple, died at Salfords, Surrey, on Thursday, 31st May, in his twenty-eighth year. Mr. Codd was called to the Bar by the Middle Temple in 1930.

### Mr. M. I. FINUCANE.

Mr. Morgan Ignatius Finucane, M.R.C.S., L.R.C.P., J.P., Barrister-at-Law, of Hare-court, Temple, died at Sedlescombe, Sussex, on Thursday, 31st May, in his sixty-ninth year. Mr. Finucane was called to the Bar by the Middle Temple in 1907.

### Mr. S. MOSES.

Mr. Samuel Moses, Barrister-at-Law, of Pump-court, Temple, died at Basing-hill, N.W., on Wednesday, 30th May. Mr. Moses was called to the Bar by the Inner Temple in 1888.

### Mr. H. G. C. DAY.

Mr. Henry George Cyril Day, M.A., Oxon, solicitor, of Liverpool and Heswall, died recently at his home at Heswall. Mr. Day was admitted a solicitor in 1897.

### Mr. E. KIMBER.

Mr. Edmund Kimber, retired solicitor, late of Walbrook and Shooter's-hill, Kent, died in a nursing home on Sunday, 3rd June, at the age of ninety-two. Mr. Kimber was educated at the City of London School, and served his articles with his brother, Sir Henry Kimber, Bart. He left his brother a few years after his admission as a solicitor, and practised on his own account for about forty years.

### Mr. W. E. PUCKERING.

Mr. Walter Ernest Puckering, solicitor, partner in the firm of Messrs. Puckering & Cooper, of York, died at his home at Scarborough on Tuesday, 5th June, at the age of fifty-three. Mr. Puckering, who was admitted a solicitor in 1917, was a member of the Yorkshire Law Society. He was Clerk to the Yorkshire Fishery Board and to the York Emmanuel Charity, and he was also Secretary to the Linton Lock Navigation.

### Mr. A. TARBOLTON.

Mr. Alfred Tarbolton, solicitor, senior partner in the firm of Messrs. Brett & Co., of Manchester, died in a nursing home recently at the age of seventy-three. Mr. Tarbolton, who was admitted a solicitor in 1883, was a magistrate for the county of Cheshire, and an authority on local history.

# POINTS IN PRACTICE.

**Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31 Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.**

### Liability for Defective Axle of Motor Van.

*Q.* 2983. Recently a motor van was being driven down the highway which was on an inclined plane when one of the wheels of the motor van came off, with the result that the motor van crashed into a building, used as a storehouse, abutting on the highway and partly demolished it. The motor van owners are insured against third-party risks, and the assured at the instance of the insurance company have repudiated liability. The insurance company state that they have satisfied themselves that the accident was brought about purely and simply by a latent defect in the stub axle of their insured's vehicle, and they further state that no amount of inspection or care could have prevented this occurrence and that there was not the slightest negligence on the part of their assured as to inspection and care of their vehicles, and neither was there any negligence upon the part of the assured's servant at the time the accident occurred. I shall be glad to have your views as to the soundness of the insurance company's contention, with a reference, if possible, to any recent cases.

*A.* Assuming the insurance company can establish their contention, liability has been correctly repudiated. It is necessary to ascertain, however, the age of the van, when it was last repaired, how often it was overhauled, whether it was carrying an excessive load, and whether the wheel came off through a sudden swerve (or braking) to avoid an accident—owing to the dangerous driving of the van itself. The insurance company claim to have satisfied themselves on some of these points, but it does not follow that a court would reach the same conclusion. Even if an offence was committed against the Motor Vehicles (Construction and Use) Regulations, it does not follow that the owners of the van would be liable in. damages: see *Phillips* v. *Britannia Hygienic Laundry Co., Ltd.* [1923] 2 K.B. 832 (68 Sol. J. 102).

### Injury to Railway Passenger.

*Q.* 2984. Miss A, who was starting a journey by rail from X to Y, arrived at X station with a large and heavy bag about five minutes before her train was due to start. She gave her bag to a porter, but gave him no instructions as to whether it should be placed in the compartment or in the luggage van and went for a coffee. On returning from the refreshment room, Miss A had just time to find her compartment and the train left, the porter having in the meantime placed the bag on the luggage rack over her seat. In starting at an intermediate station, the train gave a jerk and the bag fell down from the rack on to Miss A, thereby causing her serious mental and physical injuries. Miss A states that the bag was far too large to be put on a luggage rack, and, in fact, it had never been placed there previously. Her mother, who witnessed her departure and saw the bag on the rack, felt apprehension at the possible danger of the bag falling and remarked on this fact at home. Miss A now wishes to bring an action against the railway company in respect of the injuries she has sustained. I shall be glad if you will please give me your opinion as to the liability of the railway company. References to cases will oblige.

*A.* The porter was acting within the scope of his authority, and there appear to have been two acts of negligence by the railway company's servants, viz., that of the porter in putting a heavy bag on the rack, and that of the engine driver in starting with a jerk. There appears to have been no contributory negligence of Miss A, in permitting the bag to remain on the rack, and she is entitled to recover damages for negligence—unless she was travelling with an excursion ticket. See *Penton* v. *Southern Railway Co.* [1931] 2 K.B. 103.

**Private River**—Reservation of Fishing Rights on Sale of Both Banks—Validity—Sale of Reserved Rights—Form of Assurance.

*Q.* 2985. On the sale of an estate in 1930, the vendor reserved to himself in fee simple the fishery and fishing rights in a river which passed through such estate. The greater part of the estate was sold. Is such reservation, being a reservation of a fishery in gross, valid? It is now desired to sell the fishery and fishing rights in question, and a price has actually been agreed. Can such fishery and fishing rights be conveyed? Kindly refer to a suitable precedent.

*A.* For the purposes of this reply it is assumed that non-tidal waters are referred to in the question. The fishery or fishing rights reserved (or more correctly excepted, seeing that there can be no reservation of anything forming part of the land itself) constitute a profit or profits *à prendre* and not an easement or easements. There seems to us no reason why a profit *à prendre* of this nature should not be in gross. For instance, rights of common may in many cases be in gross. We have not been able to trace any form of grant of a profit *à prendre*, but we submit that the assurance should not cause any difficulty. Incorporeal hereditaments have always passed by grant and may be held for the same estates as apply to corporeal hereditaments. The incorporeal right can be held in fee simple absolute in possession, being "land" for the purposes of L.P.A., 1925, s. 1 (1) (see s. 205 (1) (ix). We suggest that the right (described as in the exception or reservation) should simply be conveyed to the purchaser by the vendor as beneficial owner to hold in fee simple.

**Title**—Absence of Statutory Undertaking as to Deeds—Position.

*Q.* 2986. A conveys on sale to B certain property, the conveyance containing an acknowledgment of B's right to production of documents properly retained by A, but no undertaking for safe custody; B subsequently conveys the property on sale to C; C enters into an agreement to sell the property to D. D claims to be entitled to have an undertaking for safe custody, admitting liability for its drafting and engrossment by D's solicitors. There have been many thousands of similar cases, which must follow any sale by trustees or mortgagees, etc., but such a claim has never previously been advanced nor has a condition designed to meet it been inserted in any conditions the solicitors have ever seen, whether in court or out, and whether settled by counsel or not. In the comparatively rare case of the absence of an acknowledgment, s. 45 (7) of the L.P.A., 1925, would preclude an objection, but to meet the commoner absence of undertaking there is no provision in either the statute or the General Conditions of 1925. (1) Is the purchaser entitled to object to the title because of the absence of undertaking? (2) Is the vendor bound to procure an undertaking? (3) If so, what is the position if the person holding the document refuses to give it as would almost invariably be the case? (4) Do the following expenses fall upon the vendor or the

purchaser, viz.: (*a*) tracing the document and ascertaining the holder; (*b*) drawing and engrossing the undertaking; (*c*) perusing the undertaking by the solicitors of the holder; (*d*) investigating C's (or D's) title by the solicitors of the holder, a necessary and perhaps expensive matter; (*e*) procuring the execution of the undertaking by the vendor or his mortgagee or trustee; (*f*) procuring the execution of the undertaking by any parties other than the vendor or his mortgagee or trustee. Section 45, sub-ss. (4) and (8) provide for some of these.

*A.* (1) We do not think so. See Williams, "The Contract of Sale of Land," para. 22 (5), at p. 53. It is to be noted, however, that L.P.A., 1925, s. 45 (7), on which this paragraph is based, does not mention an undertaking. It would appear to follow that if the absence of an acknowledgment is not in the circumstances mentioned in the Act an objection, the absence of an undertaking in the like circumstances would be no objection. (2) It is the well recognised practice for mortgagees not to give an undertaking, and the same is the practice in the case of trustees and others in a fiduciary capacity. The practice does not seem to be supported by any decision directly in point but the general practice of conveyancers long established would doubtless be recognised by the courts. If a purchaser from a trustee, etc., is not entitled to any undertaking, presumably a subsequent purchaser would not be entitled to an undertaking. If, then, the absence of the undertaking is, as we assume to be the case, due to the fact that A was a mortgagee or in a fiduciary capacity C would be under no obligation to supply an undertaking. (3) Had C been under any obligation to procure an undertaking the position would appear to be as follows: "It is thought that where the purchaser is entitled to have an undertaking for safe custody as well as an acknowledgment of right to the production of any documents of title, . . . but such an undertaking cannot be obtained from the person who retains possession of the documents, the vendor is bound to covenant with the purchaser for the safe custody of those documents while they shall remain in some other person's possession, and that he will give a statutory undertaking for their safe custody, if and when they shall hereafter come into his own possession; see Williams, "Vendor and Purchaser," 3rd ed., pp. 647-649." We quote the above from the above work (Note (*m*) at p. 52). (4) (*a*) On the purchaser (*Re Stuart and Olivant and Seadon's Contract* [1896] 2 Ch. 328). (*b*) Do. (L.P.A., 1925, s. 45 (8)); the obligations of the vendor are under this sub-section confined to "the expense of perusal and execution on behalf of and by himself and on behalf of and by necessary parties other than the purchaser." (*c*) On the vendor (L.P.A., 1925, s. 45 (8)). (*d*) We take it this expense will fall on the purchaser. (*e*) On the vendor (L.P.A., 1925, s. 45 (8)). (*f*) Do. Unless the executing party is the purchaser (L.P.A., 1925, s. 45 (8)).

**Trustees**—Whether Bound to Answer Enquiries as to Assignments.

*Q.* 2987. A is entitled to his father's estate, amounting to approximately £9,000, on the death of his mother, who is sixty-five years of age. A gave a first mortgage on his interest to a reversionary company, and six months afterwards wanted to borrow a further £700 from the company, and this was agreed to. When the company's solicitors made the usual enquiry as to charges from the trustees' solicitors they refused to answer and pointed out that the borrower was the person who would know whether he had given any further charges or not. The reversionary company would not go any further, but the borrower was able to get a second mortgage. The borrower swore a declaration that he had not in any way charged the interest other than to the reversionary company. A is now desirous of disposing of his interest, and the same difficulty will no doubt crop up again as to searches. Can you suggest any way whereby the trustees' solicitors could be compelled to say whether or not there were any charges registered other than the first and second mortgages, and in what way could a purchaser be protected if there is no way to compel the trustees' solicitors to reply as to searches. The second mortgagee is in a position to exercise his power of sale, but, of course, does not desire to do so.

*A.* There is no way. The Court of Appeal laid it down in *Low* v. *Bouverie* [1891] 3 Ch. 82, that trustees are not bound to answer such enquiries. A mortgagee or intending mortgagee can have no better right than the *cestui que* trust, and the latter is supposed to know what he has done. There is no protection for a purchaser. He must accept or refuse the mortgagee's title.

**Agreement for Extinguishment of Manorial Incidents**—Subsequent Agreement as to Mines and Minerals.

*Q.* 2988. A, by compensation agreement, extinguished the manorial incidents affecting his land and preserved by Pt. V of the Law of Property Act, 1922, but did not extinguish the lord's right to mines and minerals preserved by the 12th Sched. to that Act. A has now sold to B, and B wishes to clear off these mines and minerals. Can this be effected by a further compensation agreement, or must there now be a formal deed of release? Reference to the Act will oblige and also any precedent.

*A.* It appears quite clear that a simple distinct agreement between the lord and tenant (as defined in s. 143) that the rights of the lord to mines and minerals preserved by the 12th Sched. to the L.P.A., 1922, shall be treated as a manorial incident, and that the compensation for the extinguishment of the same shall be the sum of £ (following paras. 1 and 4 of the form in the 13th Sched. with receipt endorsed) will take effect under s. 138 (12), and that no other assurance is necessary. See "Encyclopædia of Precedents," 2nd ed., vol. 6. Notwithstanding the inclusion of the words as to mines and minerals in the schedule and form, the sub-section extends to any agreement in writing between the parties. As, however, stamp duty has to be paid, there seems to be no advantage in having an agreement in place of a conveyance, except that s. 44 (7) of L.P.A., 1925 (exempting the landowner from showing the lord's title), does not appear to apply to conveyances. If the lord's title is given a simple conveyance by the lord of a right to mines and minerals under the land would be the proper form of assurance.

**Garden Let with House within Rent Restrictions Acts.**

*Q.* 2989. A is the tenant of a controlled house and garden. His landlord has sold a portion of his garden to adjoining owners for the erection of a new building. What is A's position with regard to the garden? Does he remain a protected tenant in respect of the entirety of his holding? If so, to whom should he pay his rent after receiving notice of the sale of the garden away from the house?

*A.* No landlord can determine the tenancy of *part* of his tenant's holding unless power is reserved in the lease or agreement of tenancy to do so. If the rateable value of the garden, yard (if any) and other land and buildings let with the house would, if the rateable value of the whole were apportioned, be more than one-quarter of the apportioned rateable value of the house, the house itself is outside the Acts: Act of 1920, s. 12 (2), proviso (iii). If it would not be more, then the garden is treated as part of the controlled house and the landlord cannot recover possession. If the tenant thinks the rateable value of the garden, etc., would exceed one-quarter of the rateable value of the house, he would be well advised to give up possession of the part sold, so as, if possible, to bring his house within the Acts.

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Mr. Charles Alfred Morton Lightly, solicitor, of St. James's-place, S.W., and of Campden House-court, W., left £45,570, with net personalty £27,885.

# To-day and Yesterday.

## Legal Calendar.

4 June.—William Scott, coal factor, of Newcastle-on-Tyne, had been twice married, and by his two wives had had ten children, when, on the 4th June, 1751, his family was augmented by the arrival of twins, who were christened Elizabeth and John. The little girl died within three weeks; the little boy lived till his eighty-seventh year, and filled the office of Lord Chancellor almost continuously for over a quarter of a century. It was clearly not his destiny to die young, for once, as a very small child, he fell downstairs, go-cart and all, and landed quite uninjured on his feet.

5 June.—The overseers of the Parish of Chatteris, wishing to get rid of a female pauper who was on their hands, hit on the scheme of getting her married to a male pauper in a neighbouring parish to which, by this simple method, the liability for her maintenance was thenceforward transferred. However, the business did not end there, for the indignant parishioners on whom the burden was cast, caused the ingenious overseers to be indicted for conspiracy. Conviction followed, but on the 5th June, 1834, the King's Bench arrested the judgment, since "merely persuading an unmarried man and woman in poor circumstances to contract matrimony is not an offence."

6 June.—On the 6th June, 1842, a woman named Pre was tried at the Assizes of the Rhone for attempting to murder her husband by cutting his throat. After a quarrel, she had asked him to kiss her and, on his refusing, she had drawn a razor across his throat. According to her story, she acted on a momentary impulse and she was highly indignant when her counsel called medical witnesses to establish her insanity. However, occasional symptoms of incoherence in her answers seem to have been enough for judge and jury. She was acquitted and ordered to be placed in a lunatic asylum.

7 June.—On the 7th June, 1770, Mr. Justice Yates died of a neglected cold on the chest. How high was his reputation may be judged from a contemporary estimate:

"Hadst thou but ta'en each other judge
Grim Death, to Pluto's gates,
Thou might'st have done't without a grudge,
Hadst thou but left us Yates."

Although in the course of his judicial career he had resisted ministerial attempts to tamper with his integrity in cases involving Crown interests, the Government performed the graceful and unusual act of granting his widow a pension.

8 June.—On the 8th June, 1814, Lord Cochrane's trial opened before Lord Ellenborough. He was accused of having been involved in a Stock Exchange fraud perpetrated by spreading a false rumour that Bonaparte had been killed. In the resulting fluctuations of the stocks, an uncle of his had netted a considerable sum, and he too, together with a French refugee called de Berenger, the originator of the report, was indicted. Although innocent of the whole transaction, Lord Cochrane was convicted along with his fellow defendants, sentenced to fine and imprisonment, and expelled from the Navy. Eighteen years later, however, he was reinstated.

9 June.—On the 9th June, 1891, the great Baccarat case ended with a verdict for the defendants. The libel action in which the honour of Sir William Gordon-Cumming was at stake had ended so as to leave on him the stigma of a cheat. Rarely can any lawsuit have attracted so much fashionable attention. The court of Lord Chief Justice Coleridge was crowded with celebrities throughout the proceedings, and the calling of the Prince of Wales to give evidence created a tremendous sensation.

10 June.—Lord Chief Justice Popham died on the 10th June, 1607. He was buried in the parish church of Wellington in Somerset.

## The Week's Personality.

"For severall yeares he addicted himselfe but little to the studie of the lawes, but profligate company, and was wont to take a purse with them." Highway robbery was not a very promising beginning, for a future Chief Justice, but after Popham's marriage, his wife persuaded him to change his life. He "fell extremely hard to his studie and profited exceedingly. He was a strong stout man and could endure to sit at it day and night; became eminent in his calling; had good practice; was called to be a Serjeant and a Judge," becoming "a man of great wisdom and of singular learning and judgment in the law." He was particularly hard on thieves and robbers, and "if he was the death of a few score of such gentry, he preserved the lives and livelihoods of more thousands of travellers, who owed their safety to this judge's severity." It may be that thus he sought to atone to society for the evil example which he had formerly set. During the fifteen years that he presided as Chief Justice of the King's Bench, the Earl of Essex, Sir Walter Raleigh and Guy Fawkes were among the notable prisoners tried before him. In person, he was a huge, heavy, ugly man of very powerful constitution.

## The Law Lottery.

At Clerkenwell County Court recently, Mr. Registrar Friend warned a prospective litigant that "engaging in a lawsuit is a gamble," adding: "I am not sure that you might not better put your money on a certain event which takes place next week," whereby he meant and was understood to mean the Derby. It was substantially the same advice which Judge Burnett gave to an old farmer who was thinking of bringing an action. He asked him whether he had ever gone in for a lottery, and received the reply: "No, sir, I hope I have too much common-sense to run such risks." "Then take my advice, my good friend," said the judge, "and suffer any inconvenience rather than go to law, as the chances are more against you than in any lottery." Though we are so often reminded that "English justice is the best in the world," these rather pessimistic estimates are, oddly enough, in keeping with a good many of our legal dicta. This sort of thing, however, is not allowed under Nazi rule in Germany, where, it seems, "The Case of Mary Dugan" has been banned as tending to foster a spirit of scepticism towards a State institution—the administration of justice.

## The Confusion of Collusion.

Close upon "Holy Deadlock" comes a judgment in which Sir Boyd Merriman, P., contemplates without any noticeable enthusiasm a time when the State might "limit its interest in divorce to collecting the revenue from . . . the sale of coupons for dissolution of marriage across Post Office counters." Meanwhile, exercising the vigilance now prescribed against collusion, he proceeded to uphold the interest of the State in the marriage status by dismissing the petition before him. For the time being, then, the doctrine of collusion must continue to confuse simple people anxious to "do the gentlemanly thing" and provide their wives who want their freedom with hotel evidence. I think it was Sir Ellis Hume Williams, K.C., who told a story of one such who was advised that all you had to do was to take a lady—any lady—to an hotel, spend the night in separate rooms and pay both bills. Having gone through this ritual, he sent word to his wife, enclosing the receipt. Of course, when he went to a lawyer, he was told that a cat wouldn't be divorced because he and another cat had spent the night on neighbouring roofs, but the man of law sagely suggested watching the wife to see why she was so anxious for a divorce. The subsequent investigation furnished the husband with evidence for a petition on his own account, but then he was faced with his own letter confessing adultery, and the fact that it was quite untrue only made matters worse. However, fortunately, the judge took a lenient view.

# Notes of Cases.

## Judicial Committee of the Privy Council.

### Norwich Union Fire Insurance Society, Limited *v.* Wm. H. Price, Limited.

The Lord Chancellor, Lord Blanesburgh, Lord Wright, Sir Lancelot Sanderson, and Sir Sidney Rowlatt. 8th May, 1934.

Marine Insurance—Cargo of Lemons—Vessel Damaged—Lemons Undamaged but Sold because of Ripe Condition—Insurance Money Paid—Lemons not Damaged by any Peril Insured Against—Claim for Return of Money as Paid under Mistake of Fact.

In this case the appellants, an English insurance company with branches in many parts of the world, claimed from the respondents, produce brokers in Sydney, N.S.W., the return, as money paid under a mistake of fact, of £453 which had been paid to the respondents by the appellants on the footing of a loss having occurred under a policy of marine insurance, dated 11th December, 1928. The policy insured a cargo of lemons from Messina to Sydney against the usual perils, including sea perils. When entering the port at Smyrna the vessel struck a submerged rock, but the lemons, which were stowed in No. 2 hold, were undamaged. The vessel was ordered to Holland for repairs, and the lemons, which were reported to be ripening and fit to be marketed, were sold for that reason by the shipowners in Gibraltar. They were not damaged by any peril insured against, and the sale was solely because of their condition. At the date the insurance money was paid by the appellants, however, the only information possessed in Sydney was contained in two documents, first, a cable from the shippers to the respondents that the vessel had been in collision and saying "act against Norwich Union Insurance for damages," and secondly, a short-landed certificate issued by the shipowners' Sydney branch to the respondents, saying that the vessel had struck a submerged rock and that "the delay caused by this forced us to dispose of the lemons." When the appellants subsequently learned that the lemons had not in fact been damaged by any peril insured against they brought the present action for the return of the money as paid under a mistake of fact.

Lord Wright, in giving the judgment of the Board, said that the facts which were misconceived were those essential to liability and were of such a nature that on well-established principles any agreement concluded under such mistake was void in law, so that any payment made under such mistake was recoverable. Further, an agreement which was signed by the respondents, on payment of the insurance money, by which the respondents subrogated their rights in the property to the appellants, was not, in view of the appellants' belief at the time payment was made that the lemons had been lost by a peril insured against, a notice of abandonment or an acceptance of such notice within the meaning of s. 68 (6) of the Australian Marine Insurance Act, 1909, so as to debar the appellants from recovering. Appeal allowed.

Counsel: *W. L. McNair*, for the appellants; *Wilfrid Barton*, for respondents.

Solicitors: *William A. Crump & Son; Bell, Brodrick and Gray.*

[Reported by Charles Clayton, Esq., Barrister-at-Law.]

## Court of Appeal.

### Tate and Lyle Ltd. *v.* Hain Steamship Co. Ltd.

Scrutton, Greer and Slesser, L.JJ.
17th, 18th, 19th and 20th April, and 17th May, 1934.

Charter-Party—Sugar Cargo—General Average Contribution—Deviation from Contract Voyage.

Appeal from a decision of Roche, J. (77 Sol. J. 914).

A New York firm sold a quantity of sugar to the plaintiffs and, to fulfil the contract, chartered a ship belonging to the defendants, the charter-party providing that it was to load sugar at two ports in Cuba and one in San Domingo "as ordered." The firm told the shipowners' New York agents the names of the ports, Casilda, Santiago de Cuba and San Pedro de Macoris. The ship, having loaded the Casilda sugar, was sent on by the local agents to Santiago. Meanwhile the New York agents had cabled to it at Casilda directing it to go to Santiago and then to San Pedro de Macoris, but the cable having been delayed in transit and not delivered, the ship started homeward from Santiago. The mistake being discovered shortly after its sailing, orders were sent by wireless to proceed to San Pedro de Macoris. This was done, but on leaving the port the ship stranded and was so badly damaged that the cargo had to be discharged, some of it being lost and the rest brought to England in another ship. To obtain the release of their goods, the plaintiffs signed a general average bond and deposited with the defendants £9,500 as a general average contribution. They admitted liability to contribute so far as concerned the San Domingo sugar, but so far as concerned the rest denied liability on the ground of deviation from the contract voyage. In this action they claimed the return of the sum deposited. Roche, J., gave judgment for the defendants.

Scrutton, L.J., allowing the appeal, said that there was a deviation from the contract voyage, the result of which was that they lost their rights under the original contract. The provision in the charter-party that the ship was to proceed to the ports "as ordered" placed on the shipowners the responsibility of giving the orders and if these went astray the risk was theirs. As to the general average bond, it was signed by the plaintiffs under compulsion to obtain the release of their goods and was stated to be made without prejudice; they had incurred no liability under it. There was no lien, for the shipowners could name no amount for which any lien was claimed nor give information enabling calculation of the contribution. Provisions as to lien or general average in the bill of lading or charter-party were destroyed by the deviation; a cargo owner was not held liable for general average in the case of an unjustifiable deviation.

Greer, L.J., dissented, and Slesser, L.J., agreed.

Counsel: *Sir William Jowitt*, K.C., and *H. Stranger; Sir Norman Raeburn*, K.C., and *C. Miller.*

Solicitors: *Middleton, Lewis & Clarke; Botterell & Roche.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

### R. *v.* Sussex Licensing Justices; *Ex parte* Bubb.

Scrutton, Greer and Maugham, L.JJ.
9th May, 1934.

Licensing—Sale of Liquor—Clubs and Licensed Premises—Extension of Hours—"Summer Time"—"Special Requirements of the District"—Licensing Act, 1921 (11 & 12 Geo. 5, c. 42), s. 1 (1) (*b*).

Appeal from the King's Bench Division (78 Sol. J. 350).

On the 6th March, 1934, the licensing justices of the Steyning Division of Sussex made an order under s. 1 (1) (*b*) of the Licensing Act, 1921, which gave them power to extend the hours during which intoxicating liquor might be sold or supplied in any licensed premises or club, "if satisfied that the special requirements of the district render it desirable." The order directed that the hours should be varied "during the period of summer time." During the summer a large number of visitors came to the district. Under r. 8 of the Licensing Rules, 1921, orders under the Act must be "in the appropriate form set out in the schedule to these rules." The King's Bench Division quashed the order.

Scrutton, L.J., dismissing the appeal, said that the justices had not dealt with the whole year or all the weekdays, but had limited their order to "the period of summer time." They had no power to do so, and the applicable form under the rules had no such limitation. In *R.* v. *Sussex Justices;*

*ex parte Bubb* [1933] 2 K.B. 707 (77 Sol. J. 503), summer time was held not to be a "special occasion" under s. 57 of the Licensing Act, 1910, nor was it a "special requirement" of the district under this Act. Parliament in enacting summer time made no provision for changing the licensing hours.

GREER and MAUGHAM, L.JJ., agreed.

COUNSEL: *Sir R. Mitchell Bankes*, K.C., and *A. Gordon; Flowers*, K.C., and *G. Lawrence*.

SOLICITORS: *Godden, Holme & Ward*, agents for *Gates, McCully & Buckwell*, Brighton; *Walmsley & Stansbury*, agents for *J. E. Dell & Loader*, Shoreham.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

**London Jewellers Ltd. *v.* Attenborough.**
**Same *v.* Robertsons (London) Ltd.**

Scrutton, Greer and Maugham, L.JJ.
14th, 15th and 16th May, 1934.

PAWNBROKER—GOODS STOLEN BY TRICK PLEDGED—CLAIM FOR RETURN—SALE ON APPROVAL—ADOPTION OF TRANSACTION—SALE OF GOODS ACT, 1893 (56 & 57 Vict., c. 71), s. 18, r. 4.

Appeal from a decision of Swift, J. (78 SOL. J. 82). The first appeal was by Stanley Attenborough as executor of the defendant, the late Thomas Sutton.

The London Jewellers, Ltd., handed various articles of jewellery to W., who represented that he could sell them to actresses. With each article was a note marked "Appro." or "On Appro." signed by W., to show that he had received it. W. never sold any of the jewellery, but handed it to women who pawned it. W. having been sentenced to a term of imprisonment, the London Jewellers, Ltd., in this action claimed the return of the goods by the pawnbrokers. According to his evidence at the hearing, W. never intended to buy the goods, but from the first meant to get them pawned and retain the proceeds. Swift, J., ordered the return of the articles.

SCRUTTON, L.J., allowing the appeal, said that under r. 4 of s. 18 of the Sale of Goods Act, 1893, when someone obtained goods on approval the property in them passed to him when he did some act adopting the transaction. W. could not pledge the goods unless he were owner, and when he did so, he adopted the transaction (see *Kirkham* v. *Attenborough* (1897), 1 Q.B. 201). He had been given a right to sell the goods, and when he exercised that right by pledging them he became a buyer.

GREER and MAUGHAM, L.JJ., agreed.

COUNSEL: *Trapnell*, K.C., and *A. Safford; H. I. P. Hallett*.

SOLICITORS: *Attenboroughs; White & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

## High Court—Chancery Division.

**May *v.* Thomas.**

Bennett, J. 15th, 16th and 17th May, 1934.

LOTTERY—CONVICTION—PROCEEDS—MAGISTRATE'S ORDER—HOME SECRETARY DECLINES JURISDICTION—NOT *bona vacantia*.

Over £6,000, collected by the organiser of a Christmas draw, who was prosecuted and fined under the Lottery Acts, was ordered by the magistrate to be paid into a banking account in the joint names of the Chief Constable of Swansea and of a solicitor, to abide the order of the Home Secretary. The Home Secretary, having disclaimed authority to deal with it, the question arose as to its destination.

BENNETT, J., in giving judgment, said that the Attorney-General claimed the sum as *bona vacantia*, on the ground that when the organiser paid over the money in pursuance of the magistrate's order, he for ever abandoned all interest in it. However, the true inference seemed to be that he expected the Home Secretary to make some order by which he was willing to abide. It was not, therefore, possible to hold that, the Home Secretary having declined to exercise jurisdiction, the organiser ceased to have any interest in the property, though it was not certain that he was in a position to maintain a suit. It should be declared that the Crown was not entitled to any part of the fund and the defendants, other than the Attorney-General, consenting, all further proceedings should be stayed.

COUNSEL: *A. G. Mathews; J. L. Stone; C. E. Harman; H. S. G. Buckmaster; The Solicitor-General* (Sir D. Somervell, K.C.) and *Andrewes-Uthwatt; Gerald Upjohn*.

SOLICITORS: *Mawby & Barrie*, Agents for *H. L. Lang-Coath*, Swansea; *Helder, Roberts, Giles & Co.; Tippetts; The Treasury Solicitor; T. D. Jones & Co.*, Agents for *Frank Thomas & Andrews*, Swansea.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

## High Court—King's Bench Division.

**R. and W. Paul, Limited *v.* Wheat Commission.**

Roche, J. 9th May, 1934.

IMPORTS—WHEAT—"MIDDLINGS"—WHEAT OFFALS NOT LIABLE TO QUOTA PAYMENT—JURISDICTION—PUBLIC AUTHORITIES PROTECTION ACT (1893, 56 & 57 Vict., c. 61)—WHEAT ACT, 1932 (22 & 23 Geo. 5, c. 24), s. 5.

This action was brought by R. & W. Paul, Ltd., against the Wheat Commission to obtain a decision on the question whether, under the Wheat Act, 1932, wheat offals, known in the trade as "middlings," could or could not be imported into the United Kingdom without rendering the importer liable to make a quota payment. The plaintiffs were merchants and importers of, *inter alia*, animal and poultry feeding stuffs. On various dates from April, 1933, to January, 1934, they imported from Germany consignments of wheat offals, described as middlings, which are residual products extracted from wheat in the process of milling and are used for animal or poultry food. Under the Wheat Act, 1932, importers of flour were required to make quota payments, but a proviso excluded from liability a miller whose output was proved to the satisfaction of the Wheat commission to consist only of meal for consumption, without further manufacture, as animal or poultry food. The plaintiffs contended that the middlings were not liable to quota payment. The Wheat Commission wished to have the question of the plaintiffs' liability settled by arbitration under a bye-law, No. 20 of the Wheat Bye-laws, 1932, made in pursuance of s. 5 of the Wheat Act, 1932. The plaintiffs, however, contended that that bye-law was invalid. The defendants submitted that it was valid and that the court had no jurisdiction to deal with the action. With regard to the plaintiffs' claim as to some three earlier consignments the defendants pleaded the Public Authorities Protection Act on the ground that the action had not been begun in time.

ROCHE, J., said that there was a large interest involved as the trade in middlings was very substantial. The parcels now in question were said by the defendants to be the result of milling which was not in accordance with the normal practice and that they were not offals and residuals within the definition of the Act and were therefore flour. The plaintiffs' contention was that those middlings were made as residual or by-products and were not flour, and were extracted for animal food, and were expressly taken out of the character of flour and did not attract quota payment. He found on the facts that those parcels were separated in the milling as wheat offals or residual products. The facts necessary for the success of the plaintiffs' case were therefore established. It remained to consider what was the construction of the statute. In his opinion, the natural construction was that if the substances were in fact offals or residuals, as he was satisfied those were, and were intended for animal and poultry food, they were exempt from the quota payment. With regard to the first three parcels, he held that the defence of the Public Authorities Protection

Act was good. On the question of jurisdiction, in his view the Wheat Act did not exclude the jurisdiction of the court, and did not authorise a bye-law which ousted that jurisdiction. Judgment for the plaintiffs for £1,912 5s. 2d. and costs, less 100 guineas in respect of the Public Authorities Protection issue. Leave to appeal was granted.

COUNSEL: *Sir Leslie Scott*, K.C., and *John Whyatt*, for the plaintiffs; *Sir William Jowitt*, K.C., and *Hubert Hull*, for the defendants.

SOLICITORS: *Thomas Cooper & Co.; Parker, Garrett & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

### Mather *v.* Rhodes.

MacKinnon, J. 10th May, 1934.

AGREEMENT — CONSTRUCTION — PRELIMINARY POINT — PROVISION FOR WIFE'S NON-COHABITATION WITH HUSBAND — NOT CONTRARY TO PUBLIC POLICY — AGREEMENT NOT VOID.

This was a preliminary point raised in an action brought by a married woman to recover money under the following agreement: "This agreement between John William Rhodes . . . and Emily Mather . . . is to the effect that the said J. W. Rhodes undertakes and agrees to pay the said Emily Mather the sum of £8 per week as long as she is alive conditionally that apart from this allowance she has no other claim and is responsible for all her own debts and payments. It is also agreed that this arrangement is immediately cancelled should the said Emily Mather write call or attempt to approach the said J. W. Rhodes or interfere in his life and is also cancelled if at any time Emily Mather should cohabit or live with any man including her own husband . . . ." The defendant refused to pay on the ground that the clause prohibiting the plaintiff from cohabiting with her own husband was contrary to public policy and therefore illegal and unenforceable at law. On that preliminary point he now submitted three propositions of law: (1) Where any part of the consideration for an agreement was illegal the whole agreement was void, because it was impossible to discriminate between the weight given to one part of the consideration and that given to another. (2) The Court would not enforce an illegal contract even where the plaintiff was innocent and the defendant was taking advantage of his own wrong. (3) It was the duty of a wife to cohabit with her husband, and an agreement that she would not do so was necessarily void.

MACKINNON, J., said that he thought that the right construction of the provision in this case was that it indicated an event on the happening of which it would cease to be binding on either party. It was not an undertaking that the plaintiff would not return to her husband, and he could not hold that the agreement was illegal and contrary to public policy. The case could not, therefore, be disposed of on the preliminary point, and must go for trial. The application would therefore be dismissed and the costs would be costs in the action.

COUNSEL: *N. P. D'Albuquerque*, for the plaintiff; *E. W. Cave*, K.C., and *J. P. Eddy*, for the defendant.

SOLICITORS: *Baker, Robinson, Spink; T. A. Davison & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

### *Re* T. W. Mason: Kendal (Highgate No. 1) Clearance Order, 1934.

Swift, J. 14th May, 1934.

HOUSING — CLEARANCE ORDER — EVIDENCE — MINISTER OF HEALTH — CORPORATION — NOT TWO SETS OF COSTS.

This was an application by T. W. Mason to set aside a clearance order, confirmed by the Minister of Health on the 2nd January, 1934, which had been submitted to him by the Corporation of Kendal, ordering the demolition of the buildings in the area in question, including four houses belonging to the applicant.

SWIFT, J., said that it seemed to him, on the facts, that it was quite open to the corporation to say that Mr. Mason's four houses were dangerous within the meaning of s. 1 (1) (i) of the Housing Act, 1930, even if they did not say that they were unfit for human habitation. There had been cases under the Act in which he had said that it was not for him to re-try the facts of particular cases. It was not for him to determine whether those houses were fit or not for human habitation, or whether they were dangerous to the neighbouring inhabitants; that was a matter for those on whom the burden of the decision had been put by the Act. If there was any evidence—not a mere scintilla, but any real evidence—on which the Minister could act, then it was not for him (his Lordship) to interfere. The appeal would be dismissed. Dealing with the question of costs, his Lordship said that he certainly did not intend Mr. Mason to have to pay more than one set of costs. He (his Lordship) did not say for a moment that the report in *In re Bowen* [1932] 2 K.B., at p. 640, was not exactly in the language in which he expressed his views at that time, but it was not happily chosen. He was wrong when he said: "In future cases I think that some consideration should be given to the question whether both the Minister and the public authority should be made parties to the proceeding." They clearly must both be made parties to the proceeding in order to comply with the rules, but what he was directing his mind to, and what he might have said more happily, was that while they were both parties to the proceeding they must arrange between themselves as to who should conduct the litigation, and he would only allow one set of costs. The matter was open for consideration in every case, and every case would be dealt with on its particular merits, but, speaking generally, he would only allow one set of costs. He was quite certain that the Minister would let any corporation have the conduct of a case if it wanted it; on the other hand, he could see many corporations being very glad indeed that they should have the advice and assistance of the Minister in conducting their case for them. In the present case he would order Mr. Mason to pay the taxed costs of the Minister, and then he would order the Minister to pay one-half of the amount which he received to the Corporation of Kendal. That seemed to him to be the fairest way of dealing with the three parties, but that was not to be taken as a precedent, and he did not decide that people in the position of the corporation in the present case would have the costs in future. Corporations came there at their own risk; they had had a fair warning now.

COUNSEL: *Unsworth*, for the applicant; *W. Bowstead*, for the Minister of Health; *Trustram Eve*, for the Corporation of Kendal.

SOLICITORS: *McKenna & Co.*, for *W. H. Winder*, Lancaster; *The Solicitor to the Minister of Health; The Town Clerk*, Kendal.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

### *Ex parte* Wenham.

Humphreys and Macnaghten, JJ. 1st June, 1934.

MILK MARKETING BOARD — PENALTY IMPOSED ON REGISTERED PRODUCER — REGISTRATION DISPUTED — JURISDICTION — WRIT OF PROHIBITION.

The court dismissed an *ex parte* application by Sydney Wenham, on whom a penalty of £10 had been imposed by the Milk Marketing Board for failing to send in estimates, returns and information demanded by the Board, for a writ of *certiorari* to bring up and quash the penalty on the ground that the tribunal had no jurisdiction to deal with him because he was not a registered producer of milk. During the course of the argument, however, counsel for the applicant admitted that he could not get away from the position that as a physical fact the applicant's name was on the register, but he (counsel) submitted that it ought to be taken off, and that it had never been on in law because it was not open to the Milk Marketing Board to place him on the register without his application,

and it was the applicant's case that he had never in fact applied to be put on the register.

With the consent of the court counsel later on the same day made a further application and moved for an order *nisi* for a writ of prohibition directed to the Milk Marketing Board, calling on the Board to show cause why it should not be prohibited from dealing with or treating the applicant as a registered producer on the ground that the Board had exceeded its jurisdiction in placing his name on the register of producers. In support of that application counsel referred to the observations of Brett, L.J., in *Reg.* v. *Local Government Board*, L.R. 10, Q.B.D., at p. 321.

HUMPHREYS, J.: We think that you may take a rule, but it must be clearly understood that the court expresses no opinion either that prohibition will lie to this particular body, or that prohibition is the appropriate remedy in the circumstances of this case.

COUNSEL: *John Forster* for the applicant.

SOLICITOR: *J. R. Welch.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

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# Parliamentary News.

## Progress of Bills.

## House of Lords.

Administration of Justice (Appeals) Bill.
Read Second Time. [5th June.

Betting and Lotteries Bill.
In Committee. [31st May.

Clydebank and District Water Order Confirmation Bill.
Read Third Time. [5th June.

Corby (Northants) and District Water Bill.
Reported, without Amendment. [5th June.

Darlington Corporation Bill.
Reported, with Amendments. [5th June.

Durham County Water Board Bill.
Reported, with Amendments. [5th June.

Edinburgh Corporation Order Confirmation (No. 2) Bill.
Reported. [5th June.

Irvine and District Water Board Order Confirmation Bill.
Read Third Time. [5th June.

Maidstone Waterworks Bill.
Read First Time. [5th June.

Ministry of Health Provisional Order Confirmation (Burnham and District Water) Bill.
In Committee. [6th June.

Ministry of Health Provisional Order Confirmation (Herriard and District Water) Bill.
In Committee. [6th June.

Ministry of Health Provisional Order Confirmation (Leek) Bill.
Read Second Time. [31st May.

Ministry of Health Provisional Order Confirmation (Milford Haven) Bill.
Reported, without Amendment. [6th June.

Ministry of Health Provisional Order Confirmation (Morley) Bill.
Reported, without Amendment. [6th June.

Ministry of Health Provisional Order Confirmation (Sheppey Water) Bill.
In Committee. [6th June.

Ministry of Health Provisional Order Confirmation (South Middlesex and Richmond Joint Hospital District) Bill.
Read Second Time. [6th June.

Ministry of Health Provisional Order Confirmation (Steyning and District Water) Bill.
Reported, without Amendment. [6th June.

Ministry of Health Provisional Order Confirmation (Stoke-on-Trent) Bill.
Read Second Time. [6th June.

Ministry of Health Provisional Order Confirmation (Weymouth and Portland Joint Hospital District) Bill.
Read Second Time. [6th June.
Ministry of Health Provisional Order Confirmation (Wycombe and District Joint Hospital District) Bill.
Read Second Time. [31st May.
North Lindsey Water Bill.
Read Third Time. [31st May.
Petroleum (Production) Bill.
Read Third Time. [31st May.
Post Office (Sites) Bill.
Reported, without Amendment. [6th June.
Protection of Animals (Cruelty to Dogs) (Scotland) Bill.
Read First Time. [5th June.
Road Traffic (Compensation for Accidents) Bill.
Read First Time. [31st May.
South West Suburban Water Bill.
Reported, with Amendments. [5th June.
Southern Railway Bill.
Reported, with Amendments. [5th June.
Stockport Extension Bill.
Read Second Time. [6th June.
Torquay Corporation Bill.
Read Third Time. [31st May.
Trustee Savings Bank (Special Investments) Bill.
Read First Time. [6th June.
Tynemouth Corporation Bill.
Read Third Time. [31st May.
Unemployment Bill.
Read Second Time. [6th June.
Watchet Urban District Council Bill.
Commons Amendments agreed to. [5th June.
Weston-super-Mare Urban District Council Bill.
Read Second Time. [31st May.
Workmen's Compensation (Coal Mines) Bill.
In Committee. [31st May.

## House of Commons.

British Sugar (Subsidy) Bill.
In Committee. [31st May.
Edinburgh Corporation Order Confirmation (No. 2) Bill.
Read Third Time. [31st May.
Finance Bill.
In Committee. [5th June.
Gas Undertakings Bill.
Reported with Amendments. [31st May.
Irvine and District Water Board Order Confirmation Bill.
Read Second Time. [6th June.
Licensing (Permitted Hours) Bill.
Read Second Time. [1st June.
Maidstone Waterworks Bill.
Read Third Time. [1st June.
Mexborough and Swinton Traction (Trolley Vehicles) Provisional Order Bill.
Read Second Time. [6th June.
Milk Bill.
Read First Time. [1st June.
Newport Corporation (General Powers) Bill.
Read Second Time. [4th June.
North Lindsey Water Bill.
Read First Time. [31st May.
Palestine Loan Bill.
Reported, without Amendment. [1st June.
Petroleum (Production) Bill.
Read First Time. [1st June.
Protection of Animals (Cruelty to Dogs) (Scotland) Bill.
Read Third Time. [4th June.
Rotherham Corporation (Trolley Vehicles) Provisional Order Bill.
Read Second Time. [6th June.
St. Helens Corporation (Trolley Vehicles) Provisional Order Bill.
Read Second Time. [6th June.
Southend-on-Sea Corporation (Trolley Vehicles) Provisional Order Bill.
Read Second Time. [6th June.
Torquay Corporation Bill.
Read First Time. [31st May.
Tynemouth Corporation Bill.
Read First Time. [31st May.
Watchet Urban District Council Bill.
Read Third Time. [1st June.

## Questions to Ministers.

### LAW OFFICERS OF THE CROWN (REMUNERATION).

Mr. HOLFORD KNIGHT asked the Chancellor of the Exchequer whether it is intended to restore the cut in the salaries of the Law Officers of the Crown; and, if so, to what extent.

Mr. HORE-BELISHA: Yes, sir. The emergency reductions in the salaries of the Law Officers, consequent upon the crisis in the autumn of 1931, will be restored, as to one-half, on 1st July next.

Mr. KNIGHT asked the Financial Secretary to the Treasury the amount of the total emoluments of each of the Law Officers of the Crown during the last financial year.

Mr. HORE-BELISHA: The total emoluments of the Law Officers during the last financial year, inclusive of salary in each case at the rate of £2,000 a year, were as follow: The Attorney-General £11,483, the Solicitor-General, during the months of April to October, £3,802, and his successor during the subsequent period of the year £4,731. [4th June.

### BOOK "HOLY DEADLOCK."

Mr. MACQUISTEN asked the Attorney-General whether his attention has been called to a book entitled "Holy Deadlock," wherein His Majesty's judges and courts, and the legal code which they administer in matrimonial causes, are held up to public ridicule and contempt; and whether it is proposed to take any action in the matter.

The SOLICITOR-GENERAL: I have not had an opportunity of obtaining the views of my right hon. and learned Friend on the point raised in the question. I would therefore ask my hon. and learned Friend to repeat his question at a later date. [4th June.

### HOUSING AND TOWN PLANNING (APPEALS).

Sir R. CRADDOCK asked the Minister of Health the number of appeals made to him from the orders of local authorities under the Housing Act, 1925, the Housing Act, 1930, s. 46, and the Town and Country Planning Act, 1932, respectively; and also in each instance the numbers of such appeals which have been successful, partially successful, and unsuccessful, respectively.

Sir H. YOUNG: I presume that my hon. Friend is referring to the number of cases where, in connection with slum schemes, owners of property have objected to demolition or to acquisition by the local authority at site value only, and to my decisions on those cases after the holding of a public local inquiry, and if that is so, no statistics of the kind he requires are available; nor do I think that the value of such statistics would be commensurate with the labour which would be entailed in obtaining them. The number of appeals made under the Town and Country Planning Act, 1932, and previous Acts and falling to be dealt with under the Act of 1932, up to the end of last month, was 592. Of these 40 were successful, 19 partially successful and 133 unsuccessful. In addition, agreement was reached between the parties to the appeal in 61 cases, and in 154 cases the appeal was not proceeded with. [5th June.

### CRIMINAL LAW (CODIFICATION).

Sir CHARLES CAYZER asked the Attorney-General whether he will consider appointing at an early date a committee for the purpose of carrying out a codification of the criminal law.

The ATTORNEY-GENERAL (Sir Thomas Inskip): I have consulted my Noble Friend, the Lord Chancellor, and I am satisfied that to set up a committee to codify the criminal law would not lead to any useful result. [6th June.

### ARBITRATORS CALLED AS WITNESSES.

A point of interest to arbitrators was decided in the Divisional Court recently, says *The Times*, in the case of *Leiserach* v. *Schalit*, which was a motion to set aside an award. The respondent proposed to call the arbitrators (who had been unanimous) to give evidence. The applicant contended that that could only be done if the arbitrators had made an affidavit and the opposite party desired to cross-examine them on it.

Mr. Justice Humphreys said that the case was an exceptional one, and that it was essential in order to do justice that the evidence of the arbitrators should be heard. Mr. Justice Macnaghten agreed, and the arbitrators were then called by the respondent and cross-examined by the applicant, and the hearing of the motion proceeded.

# Rules and Orders.

PROVISIONAL REGULATIONS, DATED MAY 29, 1934, MADE BY THE MINISTER OF HEALTH UNDER PART X OF THE LOCAL GOVERNMENT ACT, 1933.

The Minister of Health hereby certifies under Section 2 of the Rules Publication Act, 1893, that on account of urgency the following Regulations should come into operation immediately, and in pursuance of the powers conferred on him by the Local Government Act, 1933,* and of all other powers enabling him in that behalf, hereby makes the following Regulations to come into force immediately as Provisional Regulations.

1. *Short title and date of operation.*]—These Regulations may be cited as the Audit Regulations, 1934, and shall have effect on and after the first day of June 1934.

2. *Interpretation.*]—(1) The Interpretation Act, 1889,† applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

(2) In these Regulations, unless the context otherwise requires :—

"The Act" means the Local Government Act, 1933 ;

"The Minister" means the Minister of Health ;

"Authority" means any local authority, board or joint committee whose accounts or part of whose accounts are subject to audit by a District Auditor, and "accounts" has reference to such of the accounts of the authority as are subject to audit by a District Auditor.

3. *Revocation.*]—The Orders mentioned in the Schedule to those Regulations are hereby revoked to the extent specified in the third column of that Schedule.

4. *Financial Statement.*]—The financial statement of the accounts of an authority and the certificate of the District Auditor to be appended to each copy of such statement shall be in the forms and contain the particulars which have been prescribed by the Minister by order or other instrument in force on the date as from which these Regulations have effect.

5. *Notice of Audit and Certificate of Compliance.*]—(1) Before each audit the authority shall at the time of giving the notice of the deposit of accounts required by subsection (3) of section 224 of the Act give notice, in the manner prescribed by that subsection in relation to the deposit of those accounts, of the time and place of holding the audit, and where the notice is by advertisement in a newspaper shall forward to the District Auditor a copy of the newspaper containing the advertisement as soon as may be after its publication.

(2) In the case of the audit of the accounts of a parish council or of a parish meeting, or of a joint committee of parish councils, the clerk or, if there is no clerk, the chairman of the parish council, parish meeting or joint committee, shall as soon as may be after the public notice required by subsection (3) of section 224 of the Act and by paragraph (1) of this Article has been given, forward to the District Auditor a certificate that he has complied with the provisions of the said subsection and paragraph.

6. *Production of Accounts.*]—The person by whom the accounts of the authority are to be produced for audit shall be the officer or officers of the authority charged with keeping the accounts.

7. *Abstract of Accounts.*]—The authority shall after the completion of the audit forthwith make an abstract of the accounts as audited, and shall within fourteen days after the receipt by them of the report of the District Auditor give notice by advertisement in one or more local newspapers circulating in the district that the audit has been completed and that the said abstract has been deposited at the appropriate office of the authority and will be open for inspection at all reasonable hours by any local government elector for the area of the authority :

Provided that in the case of a parish council or parish meeting, or a joint committee appointed by any two or more of such bodies, the financial statement shall be treated as the abstract of accounts for the purposes of the Act and of these Regulations, and the authority shall, in lieu of giving notice by advertisement of the completion of the audit and the deposit of the abstract as required by this Article, give public notice within seven days of the completion of the audit of the deposit of the financial statement.

8. *Auditor's report and financial statement to be furnished to constituent members of Joint Committees.*]—Every joint committee or joint board, other than a joint committee appointed by parish councils or parish meetings, shall within six weeks after receiving the report of the District Auditor, send to the several authorities constituting the joint committee or joint board a copy of the report and of the financial statement of the accounts of the joint committee or joint board as certified by the District Auditor.

9. *Auditors' Certificates.*]—(1) A certificate given by a District Auditor of a disallowance or surcharge made by him in pursuance of the provisions of paragraphs (*a*), (*b*), (*c*) or (*d*) of subsection (1) of section 228 of the Act shall specify—

(*a*) the amount of the disallowance or surcharge ; and

(*b*) in the case of a surcharge, the person upon whom the surcharge is made and the amount due from him.

(2) A certificate given by a District Auditor in pursuance of the provisions of paragraph (*f*) of subsection (1) of section 228 of the Act shall include a statement that the Auditor has examined the accounts and has allowed them subject to any disallowance or surcharge which he may have made.

(3) A certificate given by a District Auditor under either of the two preceding paragraphs shall be signed by him and dated.

10. *Extension of time.*]—The Minister may, if he thinks fit in any particular case and subject to such conditions as he may impose, extend the period during which anything is required to be done under the foregoing provisions of these Regulations provided that he is satisfied that there are special circumstances warranting the extension.

SCHEDULE.

Orders rescinded in whole or in part.

| Date of Order. | Title of Order. | Extent of rescission. |
|---|---|---|
| 8th April, 1927 | The Assessment Committees (Financial Statement and Audit of Accounts) Order, 1927. | Article 4. |
| 19th March, 1928 | The Local Authorities (Audit) Order, 1928. | Whole. |
| 21st October, 1931 | The Catchment Boards (Financial Statement and Audit of Accounts) Order, 1931. | Article 4. |

Given under the official seal of the Minister of Health this twenty-ninth day of May nineteen hundred and thirty-four.

(L.S.) *H. A. Leggett,*
Assistant Secretary.
Ministry of Health.

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THE RULES OF THE SUPREME COURT (No. 2), 1934.
DATED MAY 29, 1934.

We, the Rule Committee of the Supreme Court, hereby make the following Rules :—

1. After Order XXXVII. there shall be inserted the following Order, which shall stand as Order XXXVIIA :—

"ORDER XXXVIIA.

*Court Expert.*

1. In any case which is to be tried without a jury involving any question for an expert witness the Court or a Judge may in his discretion at any time on the application of any party appoint an independent expert (to be called "the Court expert") to inquire and report upon any question of fact or of opinion not involving questions of law or construction (hereinafter called "the issue for the expert").

2. The report so far as it is not accepted by all parties shall be treated as information furnished to the Court and shall be given such weight as the Court may think fit. The report shall be made in writing to the Court, together with such carbon or other copies as the Court may require, and copies of the report shall be forwarded by the proper officer to the parties or their solicitors.

3. Any party shall be at liberty within 14 days after receipt of a copy of the report or such other time as the Court or Judge shall direct to apply for leave to cross-examine the Court expert on his report, and the Court or Judge shall on such application either (*a*) make an order for the cross-examination of the Court expert by all parties at the trial, he being called and sworn at such stage as the Court shall at the hearing direct, or (*b*) make an order for a like cross-examination before an Examiner at such time and place as the Court shall direct.

4. The Court expert shall if possible be a person agreed between the parties, and failing agreement shall be nominated by the Court or Judge. The question or the instructions submitted or given to the Court expert, failing agreement between the parties, shall be settled by the Court or Judge.

5. If the Court expert is of the opinion that any experiment or test of any kind is necessary to enable him to report in a satisfactory manner (other than any experiment or test of a trifling character), he shall communicate the fact to the parties or their solicitors and shall endeavour to arrange with them as to the expenses involved and as to

* 23-24 Geo. 5. c. 51 † 52-3 V. c. 63.

the persons to attend and other similar matters. Failing agreement between the parties all such matters shall be determined by the Court or Judge.

6. The Court or Judge may at any time direct the Court expert to make a further or supplemental report which shall be treated as annexed to his original report.

7. The remuneration of the Court expert shall be fixed by the Court or Judge and shall include a fee for making the report, a fee for any supplementary report and a proper sum *per diem* for each day during which the presence of the Court expert may be required either in Court or before an examiner. The parties shall be jointly and severally liable to pay the remuneration so fixed without prejudice to the question by whom it shall be ordered to be paid as part of the costs of the action or proceeding. Provided however that in any case in which the appointment of a Court expert is opposed, the Court or Judge may require the party applying for the appointment to give such security for the remuneration of the Court expert as the Court or Judge may think proper as a condition of making the appointment.

8. Any party shall be at liberty on giving reasonable notice before the trial to call, with regard to the issue for the expert, not more than one expert witness, provided that in exceptional cases and by the leave of the Court two or more expert witnesses may be called. Provided however that the costs of and occasioned by the calling of any such expert shall be specially dealt with by the Judge at the trial, and that no such costs shall be allowed to a successful party unless the Judge shall certify that the calling of such expert was reasonable and that his evidence has materially assisted the Court in determining the question or issue.

9. In any case in which more than one issue for the expert shall arise the Court or a Judge may appoint more than one Court expert to inquire and report on the separate issues so arising, and these Rules shall apply to each Court expert so appointed.

10. In taxing the costs incurred in proceedings in which a Court expert shall have been appointed such just and reasonable charges and expenses as appear to have been properly incurred in obtaining the advice of an expert (whether called as a witness or not) as to whether the action should be brought or defended or as to whether the report or reports of the Court expert should be accepted to any and what extent or as to the matters on which he might properly be cross-examined upon his report or reports, including if proper the attendance in Court of the expert so employed, are to be allowed.

11. The word "Expert" in this Order shall include scientific persons, medical men, engineers, accountants, actuaries, architects, surveyors and other specially skilled persons whose opinions on any question relevant to the issues involved would be received by the Court."

2. These Rules may be cited as the Rules of the Supreme Court (No. 2) 1934, and shall come into operation on the 5th day of June, 1934, and the Rules of the Supreme Court, 1883,* shall have effect as amended by these Rules.

Dated the 29th day of May, 1934.

| | |
|---|---|
| *Sankey*, C. | *Rigby Swift*, J. |
| *Hewart*, C.J. | *A. C. Clauson*, J. |
| *Hanworth*, M.R. | *T. J. O'Connor.* |
| *F. B. Merriman*, P. | *A. W. Cockburn.* |
| *F. H. Maugham*, L.J. | *C. H. Morton.* |
| *A. A. Roche*, J. | *Roger Gregory.* |

* S.R. & O. Rev. 1904, XII, Supreme Court, E., pp. 54-417 (reprinted as amended to December 31, 1903). For subsequent amendments, *see* "Index to S.R. & O. in Force, June 30, 1933," at pp. 888-91.

THE LONG VACATION (1934) ORDER, 1934.

At the Court of Buckingham Palace, the 14th day of May, 1934.

Present.

The King's Most Excellent Majesty in Council.

Whereas by section 53 of the Supreme Court of Judicature (Consolidation) Act, 1925,* it is enacted that His Majesty may from time to time by Order in Council on a report or recommendation made, with the concurrence of the Lord Chancellor, by the Council of Judges of the Supreme Court assembled in pursuance of the provisions of Part X of that Act make, revoke or modify Orders regulating the Vacations to be observed by the High Court and the Court of Appeal and in the offices of the said Courts respectively:

And whereas a Council of Judges of the Supreme Court assembled in pursuance of the said provisions at the House of Lords on Monday, the 30th day of April, 1934, recommended that the Long Vacation for the year 1934 should be shortened so that the Michaelmas Sittings of 1934 should commence on Tuesday, the 2nd day of October:

* 15-6 G. 5. c. 49.

And whereas the Lord Chancellor concurs in that recommendation:

Now, therefore, His Majesty, by and with the advice of His Privy Council, is pleased to order and it is hereby ordered, as follows:—

1. The Michaelmas Sittings of the Court of Appeal and of the High Court of Justice shall in the year 1934 commence on the 2nd day of October, and the Long Vacation of the several Courts and offices of the Supreme Court shall for all purposes terminate on the 1st day of October in the same year.

2. This Order may be cited as the Long Vacation (1934) Order, 1934.

*M. P. A. Hankey.*

# Societies.

## The Law Association.

This Association held its 107th Annual General Court at The Law Society's House on the 30th May with Lord BLANESBURGH in the chair. Moving the adoption of the report and accounts, his lordship said that, although the state of the Association was, in its essentials, favourable, all members would desire to see it improve in years to come. The income was apparently increased by some hundreds of pounds over that of the previous year, but this increase was more than accounted for by the receipt of a large legacy. But for this, the income would have been reduced and not increased. If the utility of the Association were to be maintained, it was the bounden duty of all members to increase the income by increasing the membership. It was much to be hoped that during the next year the Association would be able to make more progress in that direction than it had in the past. The membership for the year under review was slightly less than it had been in the previous year, and this was not a position with which members would be content.

The Association, continued Lord Blanesburgh, had lost, by death, Mr. W. M. Woodhouse, one of its treasurers. To very many this loss was a keenly-felt personal one. Appropriate reference had been made in the annual report to Mr. Woodhouse's services, and if ever a laudatory reference for great work was deserved it had been deserved by Mr. Woodhouse.

By resignation, the Association was about to lose the services of its secretary, Mr. E. Evelyn Barron. As an outsider, said his lordship, he saw most of the game, and Mr. Barron, by his personality and his devotion to the work of the Association, had made himself appear to all onlookers as the very embodiment of its spirit. Exceptional qualities were needed in anyone who would aspire to be a good secretary of a charitable society, qualities both of head and of heart. Those who benefited by the fund generally had to do so through no fault of their own, and were doing their best to maintain in the world the position which they occupied or had occupied. It was, therefore, beyond everything necessary, if the bounty of such an organisation were to be appreciated, that those who had to administer it should make it plain to the recipients that they regarded it as more blessed to give than to receive. In other words, the secretary must possess a heart of gold but not a head of feathers. Many critics of the legal profession would probably say that, although heads of feathers might be rare in it, hearts of gold were still rarer. Its members knew better, that it was easier to find a heart of gold in their profession than in many others. Mr. Barron combined every quality of discretion, tact, ability and extreme sympathy, and the Association would lose him with great regret. In his successor, Mr. A. H. Morton, it hoped to find a worthy exponent of the traditions which Mr. Barron had so long and well maintained.

Some letters which Mr. Barron had handed to him, concluded his lordship, showed how much the kindness of the Association was appreciated. All members of the profession were responsible for looking after their own households, and he hoped that members of the Association would do all they could towards realising those responsibilities, and continuing and increasing the work of the Association. During its life the Association had distributed nearly £150,000, nearly £50,000 of it among members of the profession who were not also its own members.

Mr. DOUGLAS T. GARRETT also stressed the Association's urgent need for funds, largely owing to a drop of about £240 in income due to conversion of War Loan. Unless the financial state of the Association improved it would have to take the drastic and heartrending step of reducing its grants. The ordinary qualities of a good secretary were, he remarked, to be able to manage his directors while knowing himself what was for the good of the Association, and persuading the board that they were exercising their own independent and intelligent

judgment when they were really doing what they were told. Mr. Barron's most striking quality was, however, that sympathy to which the president had referred. The majority of the persons who applied to the Association for assistance were ladies, using that term in its full sense. They had been independent until declining years had forced them to haul down the flag, a very bitter thing and often a humiliating one, unless they were able to deal with a gentleman—using that term also in its full sense—like Mr. Barron, who for all these years had been his own almoner and who knew how to make easy the difficult task of receiving benefit.

Mr. EVELYN BARRON, in reply, expressed the great debt which he felt to the president, treasurers and all members of the Association. Lord Blanesburgh, he said, had since his appointment as president in 1920, always made the secretary feel as though the work gave him peculiar pleasure and was in no way an encroachment on his time. The treasurers had invariably treated the secretary with kindness and courtesy and he had never heard a word of complaint from any of them. In his thirty-five years' service he had seen many good treasurers pass away, the last of whom—Mr. Woodhouse—had been a real friend of his and of the Association. The present board of directors was not only strong but full of sympathy for the Association's objects. He hoped that his resignation would not end his connection with the Association's work. His grandfather, though not a founder, had joined very soon after the Association had been founded, over a hundred years ago, and his father had been a subscribing member for sixty years until his death, and had urged him to seek the secretaryship, a course which he had never regretted.

To the motion that the directors be reappointed, Mr. Garrett moved an amendment that Mr. Barron be elected a new director. This amendment was carried with acclamation. The meeting terminated with a vote of thanks to Lord Blanesburgh.

## Middle Temple.

GRAND DAY.

Friday, 1st June, being Grand Day of the Trinity Term at the Middle Temple, the Masters of the Bench entertained the following guests at dinner: The High Commissioner for New Zealand (Sir James Parr), the High Commissioner for South Africa (Mr. C. T. te Water), the High Commissioner for Newfoundland (Sir Edgar Bowring), the High Commissioner for the Irish Free State (Mr. J. W. Dulanty), the High Commissioner for Southern Rhodesia (Mr. J. W. Downie), Sir Herbert Cunliffe, K.C., Sir Walter Greaves-Lord, K.C., M.P., Sir David Owen, His Honour Hugh Sturges, K.C., Brigadier-General F. C. Nisbett, Mr. Walter H. Moberly (Vice-Chancellor, Victoria University of Manchester), Mr. Stamford Hutton, Mr. E. Lewis Thomas, K.C. (Treasurer of Lincoln's Inn), Mr. E. W. Cave, K.C., Canon S. C. Carpenter (Master of the Temple), Mr. Theobald Mathew, Mr. James Hood, the Rev. J. F. Clayton (Reader at the Temple Church), Mr. G. Thalben-Ball (organist, Temple Church), and Mr. T. F. Hewlett (Under Treasurer).

The following Masters of the Bench were present: The Master Treasurer (Mr. St. J. G. Micklethwait, K.C.), Judge Ruegg, K.C., Sir Ellis Hume-Williams, Bt., K.C., Mr. B. C. Aspinall, K.C., Mr. Justice Horridge, Mr. L. De Gruyther, K.C., Mr. Edward Shortt, K.C., Mr. Holman Gregory, K.C., Sir Lynden Macassey, K.C., Mr. Heber L. Hart, K.C., Mr. Justice Hawke, Viscount Finlay, Mr. J. M. Gover, K.C., Judge Dyer, K.C., Mr. Bruce Williamson, Judge Sir T. Artemus Jones, K.C., Mr. I. Scholefield, K.C., Mr. Craig Henderson, K.C., Sir Edward Tindal Atkinson, Mr. Walter Frampton, Mr. A. B. Babington, K.C., M.P., Sir Ian Macpherson, K.C., M.P., Colonel Sir Henry Foster MacGeagh, K.C., Mr. Justice du Parcq, and Mr. C. W. Lilley.

## United Law Clerks' Society.

ANNUAL MEETING.

The annual meeting of the Society was held on Thursday, 31st May, in the Old Hall, Lincoln's Inn, London. Mr. T. H. Jones, chairman of committee, occupied the chair, and moved the adoption of the annual report and accounts for 1933. He pointed out that the membership figures showed a further increase, and that compared with ten years ago there were now 370 more voluntary section members and 950 more health insurance members. The Treasurer, seconding, referred to the benefits and grants, showing that of £9,010 which had been paid to members and others, £6,400 had been paid to superannuated members. Health insurance members had received a further £2,795. The reports and accounts were adopted, and new officers elected.

VALUATION.

An extraordinary meeting followed immediately, at which the actuary's valuation report upon the Society's position as at 31st December, 1933, was submitted. The present values of the Society's assets were shown at £268,982, whilst the present values of the liabilities were stated to be £244,444. There was therefore a surplus of £24,538, which surplus was largely due to the appreciation of securities during the last three years. The committee had carefully considered the position and had submitted their observations and recommendations. The Treasurer now pointed out that a valuation was a stocktaking of income and expenditure over the expectation of life of the present members. It was therefore necessary to cultivate an insurance mind in dealing with these matters. After a considerable discussion the committee's recommendations were adopted, namely, to continue the bonuses to superannuated members, to provide for cessation of contributions on reaching age sixty-five, and for bonuses on the death benefits, carrying forward the remainder of the surplus to the next valuation. The Society's address is 2, Stone-buildings, Lincoln's Inn, London, W.C.2.

# Legal Notes and News.

## Birthday Legal Honours.

BARONS.

The Right Hon. ROBERT LORD ALNESS, LL.D., lately Lord Justice Clerk and President of the Second Division, Court of Session.

GERALD WALTER ERSKINE LODER, Esq., President of the National Union of Conservative and Unionist Associations, 1924–1926. M.P. for Brighton, 1889–1905. Called to the Bar by the Inner Temple, 1888. For political and public services.

BARONET.

HERBERT BRENT GROTRIAN, Esq., K.C., J.P. Called to the Bar by the Inner Temple, 1894. For public services.

KNIGHTS.

SAMUEL BRIGHOUSE, Esq., His Majesty's Coroner for South-West Lancashire. Admitted a solicitor, 1871.

EDMUND RALPH COOK, Esq., C.B.E., Secretary to The Law Society. Admitted a solicitor, 1894.

JESSE WILLIAM HIND, Esq., for public services in Nottinghamshire. Admitted a solicitor, 1891.

FRANCIS HENRY PEPPER, Esq., J.P., for political and public services in Birmingham. Admitted a solicitor, 1886.

Captain MAXWELL HENDRY MAXWELL ANDERSON, C.B.E., R.N. (retired), Chief Justice, Fiji. Called to the Bar by the Middle Temple, 1909.

Mr. Justice GILBERT HOLLINSHEAD BLOMFIELD JACKSON, Indian Civil Service, Puisne Judge of the High Court of Judicature at Fort St. George, Madras.

KHAN BAHADUR MAHBUBMIYAN IMAMBAKSH KADRI, O.B.E., retired District Judge, Bombay.

ORDER OF THE BATH.

C.B.

Colonel PERCY REGINALD OWEN ABEL SIMNER, D.S.O., D.L., Territorial Army. A Master of the Supreme Court. Called to the Bar by Lincoln's Inn, 1903.

ORDER OF ST. MICHAEL AND ST. GEORGE.

C.M.G.

JAMES CHRISTIE, Esq., LL.M., Parliamentary Law Draughtsman, Dominion of New Zealand.

REGINALD MALET DE CARTERET, Esq., Lieutenant Bailiff of Jersey and Jurat of the Royal Court of Jersey. Called to the Bar by the Inner Temple, 1888.

HENRY MILNES WALKER, Esq., J.P. For political and public services in Barnsley. Admitted a solicitor, 1889.

ROYAL VICTORIAN ORDER.

K.C.V.O.

Sir REGINALD WARD EDWARD LANE POOLE. President of The Law Society. Admitted a solicitor, 1891.

The Hon. MONTAGUE CHARLES ELIOT, C.V.O., O.B.E. Called to the Bar by the Inner Temple, 1895.

ORDER OF THE BRITISH EMPIRE.

C.B.E.

CYRIL ARTHUR LIDDON LEWIS, Esq., Registrar, H.M. Land Registry.

JOHN THOMAS RICHARDS, Esq., O.B.E., Chairman of the Cardiff Court of Referees under the Unemployment Insurance Acts. Admitted a solicitor, 1895.

O.B.E.

Lieutenant-Colonel HAROLD MATTHIAS ARTHUR WARD, D.S.O., T.D., Commanding Suffolk Heavy Brigade, Royal Artillery, Territorial Army. Admitted a solicitor, 1910.

ANDREW NEWTON ANDERSON, Esq., Permanent Secretary to the Supreme Court of Judicature, Northern Ireland, and Clerk of the Crown, Northern Ireland.

Major CROSSLEY ST. JOHN BROADBENT, T.D., Chairman of the Blackburn, Clitheroe and District War Pensions Committee. Admitted a solicitor, 1907.

JOHN MOIR, Esq., Depute, and until recently Interim Principal, Clerk of Session.

M.B.E.

HARRY BOLTON, Esq., Clerk to the Sutton and Cheam Urban District Council. Admitted a solicitor, 1909.

WILLIAM ARTHUR REGINALD WEBSTER, Esq., Tax Officer, Higher Grade, Board of Inland Revenue.

IMPERIAL SERVICE ORDER.

FRANK COUCHER, Esq., Chief Accountant, Supreme Court Pay Office.

AUBREY CULLEY, Esq., Assistant Principal Clerk, Office of the Controller of Stamps, Board of Inland Revenue.

## Honours and Appointments.

The King has, by warrant under His Majesty's Royal sign manual, appointed Mr. CLYDE TABOR WILSON, barrister-at-law, to be Recorder of the Borough of Birkenhead, in succession to the late Mr. Alexander Mere Latham. Mr. Wilson was called to the Bar by the Inner Temple in 1913.

The King has been pleased to approve the appointment of Mr. VERE MOCKETT, barrister-at-law, as a Puisne Judge of the High Court of Judicature at Madras, with effect from the beginning of the new term on 23rd July, in the vacancy caused by the retirement of Mr. Justice Rao Bahadur Dr. Krishna Pandalai.

Mr. EDWARD AYLMER DIGBY, K.C., has been elected a Master of the Bench of the Middle Temple.

Mr. A. G. FLINTOFF, Assistant Town Clerk, of Swansea, has been appointed Deputy Town Clerk of Barnsley. Mr. Flintoff was admitted a solicitor in 1929.

Mr. P. J. WALTERS, solicitor, has been appointed Assistant Town Clerk of Swansea. Mr. Walters was admitted a solicitor in 1929.

## Professional Announcements.

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# Court Papers.

## Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

| DATE. | | EMERGENCY ROTA. | APPEAL COURT No. I. | GROUP I. MR. JUSTICE EVE. Witness. Part II. | MR. JUSTICE BENNETT. Non-Witness. |
|---|---|---|---|---|---|
| | | Mr. | Mr. | Mr. | Mr. |
| June | 11 | More | Jones | *More | Andrews |
| ,, | 12 | Hicks Beach | Ritchie | Ritchie | More |
| ,, | 13 | Andrews | Blaker | *Andrews | Ritchie |
| ,, | 14 | Jones | More | More | Andrews |
| ,, | 15 | Ritchie | Hicks Beach | *Ritchie | More |
| ,, | 16 | Blaker | Andrews | Andrews | Ritchie |

| | | GROUP I. MR. JUSTICE CROSSMAN. Witness. Part I. | MR. JUSTICE CLAUSON. Witness. Part I. | GROUP II. MR. JUSTICE LUXMOORE. Non-Witness. | MR. JUSTICE FARWELL. Witness. Part II. |
|---|---|---|---|---|---|
| | | Mr. | Mr. | Mr. | Mr. |
| June | 11 | *Ritchie | *Hicks Beach | Blaker | Jones |
| ,, | 12 | *Andrews | *Blaker | Jones | *Hicks Beach |
| ,, | 13 | *More | *Jones | Hicks Beach | Blaker |
| ,, | 14 | *Ritchie | Hicks Beach | Blaker | *Jones |
| ,, | 15 | Andrews | *Blaker | Jones | Hicks Beach |
| ,, | 16 | More | Jones | Hicks Beach | Blaker |

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

# Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 14th June, 1934.

| | Div. Months. | Middle Price 6 June 1934. | Flat Interest Yield. £ s. d. | †Approximate Yield with redemption £ s. d. |
|---|---|---|---|---|
| **ENGLISH GOVERNMENT SECURITIES** | | | | |
| Consols 4% 1957 or after | FA | 111¾ | 3 11 7 | 3 5 3 |
| Consols 2½% | JAJO | 77xd | 3 4 11 | — |
| War Loan 3½% 1952 or after | JD | 102 | 3 8 8 | 3 7 0 |
| Funding 4% Loan 1960-90 | MN | 113 | 3 10 10 | 3 5 0 |
| Victory 4% Loan Av. life 29 years | MS | 110¾ | 3 12 3 | 3 8 3 |
| Conversion 5% Loan 1944-64 | MN | 117¼ | 4 5 3 | 2 17 10 |
| Conversion 4½% Loan 1940-44 | JJ | 109¼xd | 4 2 4 | 2 16 0 |
| Conversion 3½% Loan 1961 or after | AO | 102¼ | 3 8 6 | 3 7 4 |
| Conversion 3% Loan 1948-53 | MS | 100¾ | 2 19 6 | 2 18 8 |
| Conversion 2½% Loan 1944-49 | AO | 95¼ | 2 12 6 | 2 17 11 |
| Local Loans 3% Stock 1912 or after | JAJO | 90xd | 3 6 8 | — |
| Bank Stock | AO | 357½ | 3 7 1 | — |
| Guaranteed 2¾% Stock (Irish Land Act) 1933 or after | JJ | 81xd | 3 7 11 | — |
| Guaranteed 3% Stock (Irish Land Acts) 1939 or after | JJ | 88½xd | 3 7 10 | — |
| India 4½% 1950-55 | MN | 110 | 4 1 10 | 3 13 3 |
| India 3½% 1931 or after | JAJO | 89xd | 3 18 8 | — |
| India 3% 1948 or after | JAJO | 76xd | 3 18 11 | — |
| Sudan 4½% 1939-73 | FA | 114 | 3 18 11 | 1 7 4 |
| Sudan 4% 1974 Red. in part after 1950 | MN | 110 | 3 12 9 | 3 3 10 |
| Tanganyika 4% Guaranteed 1951-71 | FA | 111 | 3 12 1 | 3 3 0 |
| Transvaal Government 3% Guaranteed 1923-53 Average life 12 years | MN | 101 | 2 19 5 | 2 18 0 |
| L.P.T.B.4½% "T.F.A." Stock 1942-72 | JJ | 108xd | 4 3 4 | 3 5 5 |
| **COLONIAL SECURITIES** | | | | |
| Australia (Commonw'th) 4% 1955-70 | JJ | 106xd | 3 15 6 | 3 13 11 |
| *Australia (C'mm'nw'th) 3¾% 1948-53 | JD | 101 | 3 14 3 | 3 13 3 |
| Canada 4% 1953-58 | MS | 108 | 3 14 1 | 3 8 4 |
| Natal 3% 1929-49 | JJ | 98xd | 3 1 3 | 3 3 5 |
| *New South Wales 3½% 1930-50 | JJ | 97½xd | 3 11 10 | 3 14 2 |
| New Zealand 3% 1945 | AO | 97 | 3 1 10 | 3 6 8 |
| Nigeria 4% 1963 | AO | 108 | 3 14 1 | 3 11 1 |
| Queensland 3½% 1950-70 | JJ | 98xd | 3 11 5 | 3 12 0 |
| South Africa 3½% 1953-73 | JD | 102 | 3 8 8 | 3 7 2 |
| Victoria 3½% 1929-49 | AO | 99 | 3 10 8 | 3 11 10 |
| W. Australia 3½% 1935-55 | AO | 99 | 3 10 8 | 3 11 4 |
| **CORPORATION STOCKS** | | | | |
| Birmingham 3% 1947 or after | JJ | 90xd | 3 6 8 | — |
| Croydon 3% 1940-60 | AO | 97 | 3 1 10 | 3 3 4 |
| Essex County 3½% 1952-72 | JD | 104xd | 3 7 4 | 3 4 3 |
| *Hull 3½% 1925-55 | FA | 101 | 3 9 4 | — |
| Leeds 3% 1927 or after | JJ | 91 | 3 5 11 | — |
| Liverpool 3½% Redeemable by agreement with holders or by purchase | JAJO | 102xd | 3 8 8 | — |
| London County 2½% Consolidated Stock after 1920 at option of Corp. | MJSD | 77 | 3 4 11 | — |
| London County 3% Consolidated Stock after 1920 at option of Corp. | MJSD | 90 | 3 6 8 | — |
| Manchester 3% 1941 or after | FA | 91 | 3 5 11 | — |
| Metropolitan Consd. 2½% 1920-49 | MJSD | 95 | 2 12 8 | 2 18 4 |
| Metropolitan Water Board 3% "A" 1963-2003 | AO | 92 | 3 5 3 | 3 5 11 |
| Do. do. 3% "B" 1934-2003 | MS | 93 | 3 4 6 | 3 5 1 |
| Do. do. 3% "E" 1953-73 | JJ | 98 | 3 1 3 | 3 1 10 |
| Middlesex County Council 4% 1952-72 | MN | 110 | 3 12 9 | 3 5 2 |
| Do. do. 4½% 1950-70 | MN | 115 | 3 18 3 | 3 5 7 |
| Nottingham 3% Irredeemable | MN | 90 | 3 6 8 | — |
| Sheffield Corp. 3½% 1968 | JJ | 104 | 3 7 4 | 3 6 1 |
| **ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS** | | | | |
| Gt. Western Rly. 4% Debenture | JJ | 108 | 3 14 1 | — |
| Gt. Western Rly. 4½% Debenture | JJ | 117½ | 3 16 7 | — |
| Gt. Western Rly. 5% Debenture | JJ | 128½ | 3 17 10 | — |
| Gt. Western Rly. 5% Rent Charge | FA | 127½ | 3 18 5 | — |
| Gt. Western Rly. 5% Cons. Guaranteed | MA | 124½ | 4 0 4 | — |
| Gt. Western Rly. 5% Preference | MA | 112½ | 4 8 11 | — |
| Southern Rly. 4% Debenture | JJ | 107 | 3 14 9 | — |
| Southern Rly. 4% Red. Deb. 1962-67 | JJ | 107½ | 3 14 5 | 3 11 5 |
| Southern Rly. 5% Guaranteed | MA | 124½ | 4 0 4 | — |
| Southern Rly. 5% Preference | MA | 111 | 4 10 1 | — |

*Not available to Trustees over par.
†In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

# LEGACIES.

THE suggestions of the legal adviser have great weight with most testators, and an appeal is made for the claims of ST. DUNSTAN'S to be borne in mind when charitable bequests are under consideration. St. Dunstan's is solely responsible for the training, settlement and lifelong after-care of over two thousand men who have been blinded as the result of their service for King and Country.

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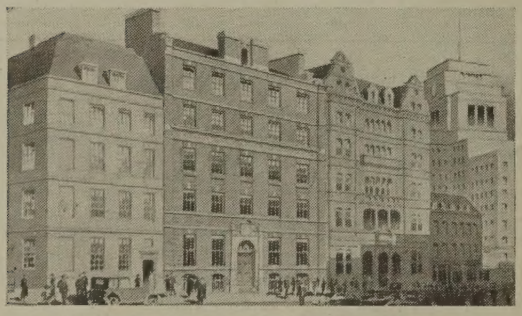

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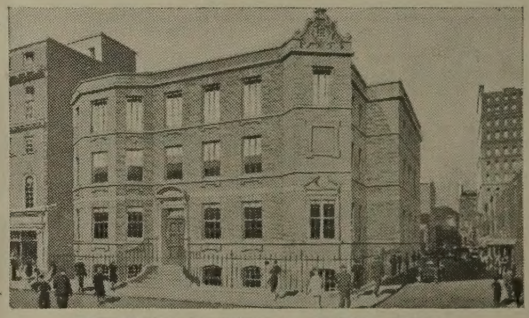

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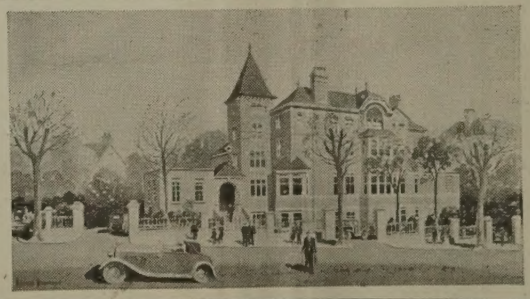

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